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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

MANUEL BALUX OCH on behalf of
himself, all others similarly situated, and
on behalf of the general public,

Plaintiffs,

v.

SAC PROFLOORS; and DOES 1-100,

Defendants.

Case No. **23CV039543**

**PLAINTIFF MANUEL BALUX OCH'S PRIVATE
ATTORNEYS GENERAL ACT OF 2004 ("PAGA")
COMPLAINT FILED PURSUANT TO
CALIFORNIA LABOR CODE § 2698, ET. SEQ.**

- 1. Violation of the PAGA for Failure to Pay
Straight Time Wages;**
- 2. Violation of the PAGA for Failure to Pay All
Overtime Wages;**
- 3. Violation of PAGA for Failure to Provide Meal
Periods;**
- 4. Violation of PAGA for Failure to Provide Rest
Periods;**
- 5. Violation of PAGA for Failure to Pay Wages
Due at Termination of Employment;**
- 6. Violation of PAGA for Knowing and
Intentional Failure to Comply with Itemized
Employee Wage Statements; and**
- 7. Violation of PAGA for Failure to Adopt a
Compliant Sick Pay/Paid Time Off Policy and
Failure to Provide Written Notice Setting Forth
Amount of Sick Leave Available.**

DEMAND FOR JURY TRIAL

1 Plaintiff MANUEL BALUX OCH (hereinafter referred to as “Plaintiff”), on behalf himself
2 and all other non-exempt employees who are presently or were formerly employed by Defendant
3 and/or DOES and/or their subsidiaries or affiliated companies and/or predecessors within the State of
4 California and who perform or performed flooring installations and/or repairs for Defendant and/or
5 DOES (hereinafter referred to as the “Aggrieved Employees”), files this Complaint against Defendant
6 SAC PROFLOORS (hereinafter referred to as “Defendant” or “SAC PROFLOORS”) and/or DOES
7 1-100.

8 **I. INTRODUCTION**

9 1. This is a representative action seeking recovery of penalties under the California Labor Code
10 Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Sections 2698 et.
11 seq., against Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to
12 bring a lawsuit on behalf of himself and other current and former employees to address an
13 employer’s violations of the *California Labor Code*.

14 2. Defendant and/or DOES provide services to multi-family residences including flooring
15 installation and repairs in both their residential and communal areas. Defendant’s and/or
16 DOES’ services include extended hours, same day installations, and weekend installations.

17 3. Defendant is a California corporation that operates out of locations in California, including its
18 principal place of business in Livermore, California, which is in Alameda County.

19 4. At all times mentioned herein, Defendant and/or DOES have conducted business in Alameda
20 County and elsewhere within California.

21 5. At all times mentioned herein, Defendant and/or DOES, within the State of California, have,
22 among other things, employed current and former non-exempt employees who perform
23 flooring installations and/or repairs.

24 6. Defendant and/or DOES have maintained uniform policies that violate the wage and hour
25 rights of Plaintiff and similarly situated non-exempt employees in the manner complained of
26 herein.

27 7. This action is brought on behalf of Plaintiff and all other Aggrieved Employees of Defendant
28 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;

1 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
2 break; were not provided accurate itemized wage statements; were not paid compensation for
3 all time worked at the straight or overtime rate; were not paid waiting time penalties; and were
4 not provided with paid sick leave / paid time off and/or a written notice setting forth the amount
5 of sick leave available. Plaintiff seeks penalties on behalf of himself and all other Aggrieved
6 Employees of Defendant and/or DOES as provided herein. This Complaint also seeks
7 attorneys' fees and costs under the PAGA, *California Labor Code* section 2699(g)(1).

8 8. At all times mentioned herein, Plaintiff and the other Aggrieved Employees were not classified
9 as "exempt" or primarily employed in an executive, professional, or administrative capacity.
10 Thus, under California law, Plaintiff and the Aggrieved Employees should be: paid
11 compensation for all time worked at the regular or overtime rate; provided meal periods;
12 authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided
13 meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or
14 permitted; paid penalties for not being provided itemized wage statements; paid compensation
15 for all time worked at the regular or overtime rate; paid penalties for not being paid timely at
16 the time of termination; and provided with sick pay in compliance with California law.

17 9. At all times mentioned herein, Defendant and/or DOES control the working conditions of
18 Plaintiff and the Aggrieved Employees including, but not limited to, having the authority to
19 hire and fire Plaintiff and the Aggrieved Employees, setting the wages of Plaintiff and the
20 Aggrieved Employees, and instructing Plaintiff and the Aggrieved Employees when and/or
21 where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved
22 and/or authorized wage and hour policies and/or practices that Plaintiff and the Aggrieved
23 Employees labored under. These policies and/or practices included, but were not limited to,
24 policies and/or practices regarding meal periods, straight-time, rest periods, wage statements,
25 paying compensation at time of termination, timing of payment, and sick pay/paid time off.
26 Further, Defendant and/or DOES had the ability to prevent Plaintiff and the Aggrieved
27 Employees from working.

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1 **II. JURISDICTION AND VENUE**

2 10. Plaintiff is an individual residing in California. At all times relevant to this action, Plaintiff was
3 employed by Defendant and/or DOES in California. Plaintiff, and each of the Aggrieved
4 Employees, were employees of Defendant and/or DOES, and/or its operating divisions and
5 subsidiaries, within the State of California. Plaintiff and each of the Aggrieved Employees
6 were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent
7 Notice to the State of California Labor and Workforce Development Agency (LWDA).

8 11. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
9 and/or DOE operate industrial facilities, employ non-exempt employees, conduct business, and
10 commit *California Labor Code* violations within Alameda County and California. Each
11 Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes.
12 The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved
13 employees situated within the State of California and within Alameda County. Defendant
14 and/or DOES employ numerous aggrieved employees in California and/or Alameda County.

15 12. Plaintiff brings this action on behalf of himself and the Aggrieved Employees of Defendant
16 and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the general
17 public, will and does seek to recover any and all penalties for each and every violation shown
18 to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the
19 LWDA of his intent to bring this action, in an amount according to proof, as to those penalties
20 that are otherwise only available to public agency enforcement actions. Funds recovered will
21 be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the
22 penalties recovered being reimbursed to the State of California and the LWDA.

23 13. There is no federal question at issue as the issues herein are based solely upon California
24 statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil*
25 *Procedure*, and *Civil Code*.

26 14. The California Superior Court also has jurisdiction in this matter because the penalties sought
27 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,
28 according to proof. Defendant and/or DOES either own, maintain offices, transact business,

have an agent or agents, and/or otherwise are found within the County of Alameda, California.

III. THE PARTIES

A. Plaintiff

15. Throughout the relevant time period, Plaintiff is and was a resident of California. During the relevant time period, Plaintiff was employed by Defendant and/or DOES in California and performed work in Alameda County. Plaintiff was employed by Defendant and/or DOES until on or about February 7, 2023.

16. Plaintiff and the Aggrieved Employees were and are employed in the State of California by the Defendant and/or DOES as non-exempt employees.

17. A notice correspondence showing compliance with *Labor Code* Section 2699.3 was sent to the LWDA and Defendant on April 13, 2023. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. The violations alleged in this notice also forms the basis for the allegations herein. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notices of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Labor Code* section 2699.3(a)(2)(C).

B. Defendants

18. Defendant and/or DOES provide services to multi-family residences including flooring installation and repairs in both their residential and communal areas. Defendant’s and/or DOES’ services include extended hours, same day installations, and weekend installations.

19. On information and belief, Defendant and/or DOES exercised control over the wages, hours, and/or working conditions of Plaintiff and the Aggrieved Employees throughout the liability period.

20. Defendant and/or DOES employ non-exempt employees in California.

21. Defendant and/or DOES are a California corporation that operates out of locations in California, including its principal place of business in Livermore, California, which is in Alameda County.

22. At all times mentioned herein, Defendant and/or DOES, within the State of California, have, among other things, employed current and former non-exempt employees who perform flooring installations and/or repairs.

23. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on information and belief alleges that said Defendants are now, and/or at all times mentioned in this Complaint were doing business in the State of California and/or throughout the United States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

24. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized the acts of each of the remaining Defendants.

25. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners, agents, owners, and/or shareholders of Defendants and/or DOES and were acting on behalf of Defendants and/or DOES at all times.

IV. GENERAL ALLEGATIONS

26. During all, or a portion, of the one (1) year period before Plaintiff filed notice of his claims with the LWDA, Plaintiff and each of the Aggrieved Employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the Aggrieved Employees are composed of all current and former non-exempt employees of Defendant and/or DOES, or any of its operating divisions and/or subsidiaries, who worked in California.

27. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated non-exempt employees for all of the hours they worked, including, but not limited to, rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day when the employees were

performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties that went unpaid. Defendant and/or DOES fails to keep accurate time records of Plaintiff's and the Aggrieved Employees' time. Instead of having employees record their hours worked, Defendant and/or DOES have supervisors record time for the employees they supervise. This leads to employees having inaccurate times recorded and fewer recorded hours than employees actually work. As such, Plaintiff and the Aggrieved Employees are not paid for all of the hours they work and are owed additional wages. Defendant's and/or DOES' failure to pay Plaintiff and the Aggrieved Employees for all hours worked while under Defendant's and/or DOES' control and/or while suffered or permitted to work has resulted in non-exempt employees being deprived of straight time and/or overtime wages.

28. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated non-exempt employees for all of the hours they worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and the Aggrieved Employees work through their meal periods and/or were unable to take meal periods. Thus, Defendant and/or DOES shaves/steals earned wages from Plaintiff and the Aggrieved Employees every day they work without a meal period and have time deducted.

29. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated non-exempt employees for all of the hours they worked because Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the Aggrieved Employees by deducting a portion of the wages earned by Plaintiff and the Aggrieved Employees when they worked through their meal periods and/or when Defendant and/or DOES recorded a meal period for Plaintiff and the Aggrieved Employees when no meal period was taken. Specifically, Plaintiff and the Aggrieved Employees worked through their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law.

1 30. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or
2 practice of not paying Plaintiff and similarly situated non-exempt employees for all of the
3 hours they worked at the agreed upon or statutory minimum wage. Defendant and/or DOES
4 pays Plaintiff and the Aggrieved Employees on a piece-rate basis, which compensates based
5 on the job (*i.e.* employees are only paid when they complete a flooring installation). Defendant
6 and/or DOES failed to separately compensate Plaintiff and the Aggrieved Employees for
7 nonproductive time and/or rest periods, which violates California Labor Code sections 1194,
8 1197, 221, and 223. As such, Plaintiff and the Aggrieved Employees are not paid for all hours
9 worked.

10 31. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or
11 practice implementing an unlawful piece rate compensation plan that violates California's "no
12 borrowing rule." Rest periods are considered hours worked and must be compensated.
13 However, Defendant's and/or DOES' piece-rate plan fails to separately compensate for rest
14 periods and/or nonproductive time. Under the California minimum wage law, employees must
15 also be compensated for each hour worked at either the legal minimum wage or the contractual
16 hourly rate, and compliance cannot be determined by averaging hourly compensation. Here,
17 Defendant and/or DOES "borrow" from Plaintiff's and the Aggrieved Employees' piece-rate
18 earnings to supplement their hourly pay in order to satisfy their minimum wage obligations.
19 Averaging of all wages paid under a piece rate plan, within a particular pay period, in order to
20 determine whether the employer complied with its minimum wage obligations is not permitted
21 under these circumstances, for to do so would result in the employer paying the employees less
22 than the contract rate for those activities which the piece rate plan requires payment of a
23 specified amount equal to or greater than the minimum wage, in violation of *California Labor*
24 *Code* sections 221 - 223.

25 32. At all times mentioned herein, in addition to "Regular" and "Overtime" earnings, Defendant
26 and/or DOES also compensated Plaintiff and the Aggrieved Employees with
27 "PERFORMANCE" and "BREAK TIME" payments. All "Regular," "PERFORMANCE,"
28 and "BREAK TIME" payments should have been factored in Plaintiff's and the Aggrieved

- Employees' regular rate of pay. Defendant's and/or DOES' failure to pay Plaintiff and the Aggrieved Employees at the appropriate regular rate of pay resulted in Plaintiff and the Aggrieved Employees not being paid all overtime wages owed to them.
33. At all times mentioned herein, Defendant and/or DOES have had a consistent policy and/or practice of not paying Plaintiff and similarly situated non-exempt employees all wages owed because Defendant and/or DOES failed to pay Plaintiff and the Aggrieved Employees at the appropriate regular rate of pay for all overtime hours worked. Specifically, Defendant and/or DOES failed to incorporate payment for all hours worked and bonuses employees were paid when calculating employees' regular rate of pay for purposes of paying overtime compensation. Plaintiff and the Aggrieved Employees are paid non-discretionary performance bonuses, yet these bonuses were not included in employees' regular rate of pay.
34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one (1) hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
35. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all Aggrieved Employees, and by failing to provide compensation for these unprovided meal periods, Defendant and/or DOES willfully violate the provisions of *California Labor Code* section 226.7, IWC Wage Order No. 16-2001, and California Code of Regulations, Section 11160(11). In addition, Defendant and/or DOES fail to provide Plaintiff and the Aggrieved Employees with another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.
36. At all times mentioned herein, Defendant and/or DOES breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy of requiring non-exempt employees within the State of California, including Plaintiff, to work through their meal periods to satisfy the demanding workload duties imposed by Defendant and/or DOES,

thereby denying Plaintiff and the Aggrieved Employees of the right to be completely free from employer control under California law. Defendant and/or DOES further fail to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the meal period is not provided, or other compensation, as required by California's state wage and hour laws.

37. At all times mentioned herein, Defendant and/or DOES fail to keep accurate records of meal periods. Instead of having employees record their hours worked, including meal period time, Defendant and/or DOES has supervisors record time for the employees they supervise. This leads to employees having inaccurate times recorded, including meal period times.

38. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one (1) hour of pay as additional compensation at Plaintiff's and the Aggrieved Employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.

39. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all Aggrieved Employees and by failing to provide compensation for these periods, Defendant and/or DOES willfully violate the provisions of *California Labor Code* section 226.7, IWC Wage Order No. 16-2001, and California Code of Regulations, Section 11160(12).

40. At all times mentioned herein, Defendant and/or DOES breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy of requiring Plaintiff and the Aggrieved Employees to work through their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the Aggrieved Employees of the right to be completely free from employer control under California law.

41. At all times mentioned herein, Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff and the Aggrieved Employees with rest periods "at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof." Specifically, Defendant and/or DOES do not provide Plaintiff and the Aggrieved Employees with rest periods

consisting of ten (10) minutes net rest time, nor does Defendant and/or DOES provide them with a rest period per four (4) hours worked or major fraction thereof.

42. At all times mentioned herein, Defendant and/or DOES operate under an absence control policy that counts sick leave taken pursuant to *California Labor Code* section 233 as an unauthorized absence. Thus, Defendant's and/or DOES' sick pay policy punishes Plaintiff and Aggrieved Employees for use of protected and appropriate sick leave.

43. At all times mentioned herein, Defendant's and/or DOES' sick pay policy fails to pay Plaintiff and Aggrieved Employees sick pay for all appropriate and protected purposes enumerated in *California Labor Code* sections 233, 234, and 246, and fail to provide written notice setting forth the amount of sick leave available for use to Plaintiff and the Aggrieved Employees either in their wage statements or in a separate writing provided to them on their designated pay dates.

44. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the Aggrieved Employees were entitled to receive complete and accurate pay statements in accordance with California law.

45. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they were not providing complete and accurate pay statements in accordance with California law to Plaintiff and the Aggrieved Employees.

46. At all times mentioned herein, Defendant and/or DOES have failed to comply with IWC Wage Order 16-2001(6) by failing to maintain accurate time records showing hourly compensation, when the employee begins and ends each workday, when the employee begins and ends their meal periods, and total daily hours worked by itemizing in wage statements and accurately reporting total hours worked by Plaintiff and the Aggrieved Employees.

47. At all times mentioned herein, Defendant's and/or DOES' failure to retain accurate records of total hours worked by Plaintiff and Aggrieved Employees was willful and deliberate, was a continuous breach of Defendant's and/or DOES' duty owed to Plaintiff and the Aggrieved Employees.

48. At all times mentioned herein, Defendant and/or DOES knowingly and intentionally did not accurately itemize the total piece-rate units and the rate at which they were to be paid on wage

1 statements as *California Labor Code* section 226, subsection (a), requires.

2 49. At all times mentioned herein, Defendant and/or DOES have also failed to correctly provide
3 the name of the legal entity that employs Plaintiff and the Aggrieved Employees by citing their
4 employer as “SACPROFLOORS.” There is no legal entity registered with the California
5 Secretary of State by that name. The closest legal entity registered with the California Secretary
6 of State is “SAC PROFLOORS.” Therefore, the legal entity employing Plaintiff and Aggrieved
7 Employees have not been itemized on their wage statements in compliance
8 with *California Labor Code* section 226(a).

9 50. At all times mentioned herein, Defendant and/or DOES fail to include the amount of sick leave
10 available for use on employees’ itemized wage statements.

11 51. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
12 they had a duty to compensate Plaintiff and the Aggrieved Employees in accordance with
13 California law, and that Defendant and DOES had the ability to pay such compensation, but
14 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
15 Plaintiff and the Aggrieved Employees that they were properly compensating Plaintiff and the
16 Aggrieved Employees.

17 52. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
18 Plaintiff and the Aggrieved Employees were entitled to timely wages at the time of termination.
19 Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, meal
20 period premiums, and/or rest period premiums owed at the time of termination.

21 53. At all times mentioned herein, Defendant and/or DOES fail to pay Plaintiff and the Aggrieved
22 Employees a sum certain at the time of termination or within seventy-two (72) hours of their
23 resignation and have failed to pay those sums for thirty (30) days thereafter.

24 54. At all times mentioned herein, Defendant’s and/or DOES’ employees, including Plaintiff those
25 similarly situated, were not timely paid all wages owed to them at the time of termination
26 and/or within seventy-two (72) hours of their leaving Defendant’s and/or DOES’ employ in
27 violation of *California Labor Code* sections 201 and 202. For example, Plaintiff’s employment
28 with Defendant and/or DOES ended on or about February 7, 2023. Plaintiff did not receive his

1 final paycheck within seventy-two (72) hours of terminating his employment with Defendant
2 and/or DOES. Plaintiff did not receive his final paycheck until the next regularly scheduled
3 pay date, approximately one (1) week later.

4 55. At all times mentioned herein, Defendant and/or DOES are and were aware that Plaintiff and
5 the Aggrieved Employees were not paid all straight time and minimum wages owed, nor
6 provided meal and rest periods. Defendant's and/or DOES' denial of wages and other
7 compensation due to Plaintiff and the Aggrieved Employees was willful and deliberate.

8 56. Plaintiff brings this action on behalf of himself and non-exempt employees who were
9 employed by Defendant and/or DOES within the State of California and who perform or
10 performed flooring installations and/or repairs for Defendant and/or DOES beginning one year
11 prior to the date Plaintiff sent notice to the LWDA.

12 57. Plaintiff reserves the right to amend or modify the definition of Aggrieved Employees with
13 respect to the issues or in any other way.

14 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
15 **PAGA for Failure to Pay Straight Time Wages (California Labor Code §2698 et. seq.).**

16 58. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
17 as if fully plead.

18 59. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the
19 Aggrieved Employees for all hours worked.

20 60. It is fundamental that an employer must pay its employees for the time worked. *California*
21 *Labor Code* section 222 prohibits the withholding on part of a wage. *California Labor Code*
22 section 223 prohibits the payment of less than a statutory or contractual wage scale. *California*
23 *Labor Code* sections 1194-1197.1 prohibit the payment of less than the minimum wage.
24 *California Labor Code* section 224 only permits deductions from wages when the employer is
25 required or empowered to do so by state or federal law or when the deduction is expressly
26 authorized in writing by the employee for specified purposes that do not in effect reduce the
27 agreed upon wage.

28 61. Section 1197.1 of the *California Labor Code* states “[a]ny employer or other person acting

individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

62. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendant and/or DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

63. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked in that Defendant and/or DOES has not paid for all the time Plaintiff and the Aggrieved Employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties that went unpaid.

64. Defendant and/or DOES fail to keep accurate time records of Plaintiff’s and the Aggrieved Employees’ time. Instead of having employees record their hours worked, Defendant and/or DOES have supervisors record time for the employees they supervise. This leads to employees having inaccurate times recorded and fewer recorded hours than they actually work. As such, Plaintiff and the Aggrieved Employees are not paid for all of the hours they work and are owed additional wages.

65. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and the Aggrieved Employees work through their meal periods and/or were unable to take meal periods. Thus, Defendant and/or DOES shaves/steals earned wages from Plaintiff and the Aggrieved Employees every day they work without a meal period and have time deducted.

66. Likewise, Plaintiff and the Aggrieved Employees are informed and believe and thereon allege

1 that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the
2 Aggrieved Employees by deducting a portion of the wages earned by Plaintiff and the
3 Aggrieved Employees when they worked through their meal periods and/or when Defendant
4 and/or DOES recorded a meal period for Plaintiff and the Aggrieved Employees when no meal
5 period was taken. Specifically, Plaintiff and the Aggrieved Employees worked through their
6 meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
7 thereby denying them the right to be completely free from employer control under California
8 law.

9 67. Alternatively, Plaintiff and the Aggrieved Employees are not paid wages at the agreed upon or
10 statutory minimum wage for all hours worked. Defendant and/or DOES pays Plaintiff and the
11 Aggrieved Employees on a piece-rate basis, which compensates based on the job (*i.e.*
12 employees are only paid when they complete a flooring installation). Defendant and/or DOES
13 failed to separately compensate Plaintiff and the Aggrieved Employees for nonproductive time
14 and/or rest periods, which violates California Labor Code sections 1194, 1197, 221, and 223.
15 As such, Plaintiff and the Aggrieved Employees are not paid for all hours worked.

16 68. Defendant's and/or DOES' unlawful piece rate compensation plan violates California's "no
17 borrowing rule." Rest periods are considered hours worked and must be compensated.
18 However, Defendant's and/or DOES' piece-rate plan fails to separately compensate for rest
19 periods and/or nonproductive time. Under the California minimum wage law, employees must
20 also be compensated for each hour worked at either the legal minimum wage or the contractual
21 hourly rate, and compliance cannot be determined by averaging hourly compensation. Here,
22 Defendant and/or DOES "borrows" from Plaintiff's and the Aggrieved Employees' piece-rate
23 earnings to supplement their hourly pay in order to satisfy their minimum wage obligations.
24 Averaging of all wages paid under a piece rate plan, within a particular pay period, in order to
25 determine whether the employer complied with its minimum wage obligations is not permitted
26 under these circumstances, for to do so would result in the employer paying the employees less
27 than the contract rate for those activities which the piece rate plan requires payment of a
28 specified amount equal to or greater than the minimum wage, in violation of California Labor

Code sections 221 - 223.

69. Failing to pay for all hours worked while under Defendant's and/or DOES' control and/or while suffered or permitted to work has resulted in Plaintiff and the Aggrieved Employees being deprived of straight time wages.

70. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial unpaid wages, and lost interest on such wages, and expenses.

71. Plaintiff and the Aggrieved Employees were employed by Defendant and/or DOES at all relevant times. Defendant and/or DOES were required to compensate Plaintiff and the Aggrieved Employees for all hours worked and were prohibited from making deductions that had the effect of reducing the agreed upon wage.

72. Defendant and/or DOES commit the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the Aggrieved Employees. Defendant and/or DOES act with malice or in conscious disregard of Plaintiff's and the Aggrieved Employees' rights.

73. Plaintiff, as a former "non-exempt" employee of Defendant and/or DOES who Defendant and/or DOES fail to pay all wages, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *California Labor Code* section 2699.5.

74. Plaintiff, as a representative of the people of the State of California, seeks any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement ("DLSE"). This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

75. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars

(\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

76. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Pay All Overtime Wages Owed

77. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

78. *California Labor Code* section 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

79. *California Labor Code* section 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

80. Defendant and/or DOES fail to pay overtime when employees worked over eight (8) hours per day and when employees worked over forty (40) hours per week. Defendant and/or DOES fail to pay Plaintiff and the Aggrieved Employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week.

81. Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours worked because Defendant and/or DOES fail to pay them overtime wages for all overtime hours worked. This resulted in Plaintiff and the Aggrieved Employees not being paid all overtime wages owed to them.

1 82. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
2 similarly situated for all hours worked in that Defendant and/or DOES has not paid for all the
3 time Plaintiff and the Aggrieved Employees worked throughout the day, including, but not
4 limited to rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any
5 other time in the day when the employees were performing work tasks, subject to the control
6 of Defendant and/or DOES and/or otherwise had work duties that went unpaid. Because
7 Plaintiff and the Aggrieved Employees work shifts lasting over eight (8) hours, these unpaid
8 hours would qualify for the overtime rate.

9 83. Defendant and/or DOES fail to keep accurate time records of Plaintiff’s and the Aggrieved
10 Employees’ time. Instead of having employees record their hours worked, Defendant and/or
11 DOES have supervisors record time for the employees they supervise. This leads to employees
12 having inaccurate times recorded and fewer recorded hours than they actually work. As such,
13 Plaintiff and the Aggrieved Employees are not paid for all of the hours they work and are owed
14 additional wages. Because Plaintiff and the Aggrieved Employees work shifts lasting over
15 eight (8) hours, these unpaid hours would qualify for the overtime rate.

16 84. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff
17 and the Aggrieved Employees for all hours worked in that Defendant and/or DOES
18 continuously and consistently clocked Plaintiff and the Aggrieved Employees out for a thirty
19 (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and
20 the Aggrieved Employees work through their meal periods and/or were unable to take meal
21 periods. Thus, Defendant and/or DOES shaves/steals earned wages from Plaintiff and the
22 Aggrieved Employees every day they work without a meal period and have time deducted.
23 Because Plaintiff and the Aggrieved Employees work shifts lasting over eight (8) hours, these
24 unpaid hours would qualify for the overtime rate.

25 85. Further, Plaintiff and the Aggrieved Employees were deprived of wages for all overtime hours
26 worked because Defendant and/or DOES failed to pay Plaintiff and the Aggrieved Employees
27 at the appropriate regular rate of pay for all overtime hours worked. Specifically, Defendant
28 and/or DOES failed to incorporate payment for all hours worked and bonuses employees were

1 paid when calculating employees' regular rate of pay for purposes of paying overtime
2 compensation. Plaintiff and the Aggrieved Employees are paid non-discretionary performance
3 bonuses, yet these bonuses were not included in employees' regular rate of pay.

4 86. Alternatively, Defendant and/or DOES pay Plaintiff and the Aggrieved Employees on a piece-
5 rate basis, which compensates based on the job (i.e. employees are only paid when they
6 complete a flooring installation). Defendant and/or DOES failed to separately compensate
7 Plaintiff and the Aggrieved Employees for nonproductive time and/or rest periods, which
8 violates California Labor Code sections 1194, 1197, 221, and 223. As such, Plaintiff and the
9 Aggrieved Employees are not paid for all hours worked. Because Plaintiff and the Aggrieved
10 Employees work shifts lasting over eight (8) hours, these unpaid hours would qualify for the
11 overtime rate.

12 87. In addition to "Regular" and "Overtime" earnings, Defendant and/or DOES also compensated
13 Plaintiff and the Aggrieved Employees with "PERFORMANCE" and "BREAK TIME"
14 payments. All "Regular," "PERFORMANCE," and "BREAK TIME" payments should have
15 been factored in Plaintiff's and the Aggrieved Employees' regular rate of pay. Defendant's
16 and/or DOES' failure to pay Plaintiff and the Aggrieved Employees at the appropriate regular
17 rate of pay resulted in Plaintiff and the Aggrieved Employees not being paid all overtime wages
18 owed to them.

19 88. Plaintiff and those similarly situated Aggrieved Employees were employed by Defendant
20 and/or DOES at all relevant times. Defendant and/or DOES were required to compensate
21 Plaintiff and the Aggrieved Employees for all overtime hours worked and were prohibited from
22 making deductions that had the effect of reducing the agreed upon wage.

23 89. Plaintiff and the Aggrieved Employees have suffered, and continue to suffer, substantial
24 unpaid wages, and lost interest on such wages, and expenses.

25 90. Plaintiff, as a representative of the people of the State of California, will seek any and all
26 penalties otherwise capable of being collected by the Labor commission and/or the Department
27 of Labor Standards Enforcement (DLSE) for violations of *California Labor Code* section 510.

28 91. Plaintiff, as a representative of the people of the State of California, will seek all penalties

otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 222, 223 and 510.

92. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per *California Labor Code* section 2699(f)(2).

93. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the PAGA for Failure to Provide Meal Periods (California Labor Code §2698 et. seq.).

94. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

95. Under *California Labor Code* section 512, and IWC Wage Order 16-2001(11), no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

96. In addition, an employer may not employ an employee for a work period of more than ten (10)

hours per day without providing the employee with a second meal period of not less than thirty (30) minutes.

97. Under *California Labor Code* section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

98. Defendant and/or DOES fail to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and Aggrieved Employees who worked for work periods of more than five (5) consecutive hours. As such, Plaintiff and Aggrieved Employees were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted, duty-free meal period within that time.

99. Defendant and/or DOES breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Plaintiff and the Aggrieved Employees to work through their meal periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the Aggrieved Employees of the right to be completely free from employer control under California law.

100. Further, Defendant and/or DOES instituted a consistent policy/practice of not providing second meal periods to Plaintiff and all of the Aggrieved Employees and/or providing compensation in lieu thereof. Specifically, Plaintiff and the Aggrieved Employees are required to work shifts over ten (10) hours long but never received second meal periods.

101. In addition, Defendant and/or DOES fail to keep accurate records of meal periods. Instead of having employees record their hours worked, including meal period time, Defendant and/or DOES has supervisors record time for the employees they supervise. This leads to employees having inaccurate times recorded, including meal period time.

102. By failing to provide statutory first and/or second meal periods, and by failing to provide compensation for unprovided meal periods, as alleged above, Defendant and/or DOES willfully violated the provisions of the *California Labor Code* section 226.7 and 512.

103. By failing to provide statutory first and/or second meal periods, and by failing to provide

1 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
2 willfully violate the provisions of *California Labor Code* sections 226.7 and 512, and IWC
3 Wage Order No. 16-2001.

4 104. As a result of the unlawful acts of Defendant and/or DOES, Plaintiff and the Aggrieved
5 Employees have been deprived of premium wages and/or other compensation in amounts to
6 be determined at trial, and are entitled to recovery of such amounts, plus interest, attorneys'
7 fees, and costs.

8 105. During the relevant time period, Defendant and/or DOES fail to pay Plaintiff and the
9 Aggrieved Employees all meal period premiums due pursuant to *California Labor Code*
10 section 226.7.

11 106. Defendant's and/or DOES' conduct violates applicable IWC Wage Order 16-2001 and
12 *California Labor Code* sections 226.7 and 512(a).

13 107. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
14 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
15 has satisfied all prerequisites to serve as a representative of the general public to enforce
16 California's labor laws, and the penalty provisions identified in *California Labor Code* section
17 2699.5.

18 108. Plaintiff, as a representative of the people of the State of California, will seek all penalties
19 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
20 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
21 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
22 226.7 and 512.

23 109. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
24 behalf of himself and the other aggrieved employees, seeks recovery of applicable civil
25 penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
26 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
27 (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per
28 *California Labor Code* section 2699(f)(2).

1 110. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
2 employees, seeks penalties pursuant to *California Labor Code* Section 558 for violations
3 pursuant to this chapter or any provisions regulating hours and days of the week of the
4 Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and 558(a)(2).

5 **FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
6 **PAGA for Failure to Provide Rest Periods (California Labor Code §2698 et. seq.).**

7 111. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
8 as if fully plead.

9 112. Industrial Welfare Commission Order No. 7-2001 section 12(A) states “[e]very employer shall
10 authorize and permit all employees to take rest periods, which insofar as practicable shall be
11 in the middle of each work week period. The authorized rest period time shall be based on the
12 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
13 fraction thereof.”

14 113. At all times mentioned herein, Defendant and/or DOES fail to authorize and/or permit rest
15 period time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
16 per four (4) hours or major fraction thereof.

17 114. Defendant and/or DOES have a consistent policy and/or practice of not providing duty free,
18 net-ten minute, paid rest periods to Plaintiff and all Aggrieved Employees and/or providing
19 compensation in lieu thereof.

20 115. As discussed above, Defendant and/or DOES operate an unlawful piece rate compensation
21 plan. Under Defendant’s and/or DOES’ piece-rate compensation plan, Plaintiff and the
22 Aggrieved Employees are not separately compensated for their rest periods, which is required
23 under California law.

24 116. Further, Defendant and/or DOES breached the legal duty to provide rest periods to employees
25 by imposing a continuous and consistent policy of requiring Plaintiff and the Aggrieved
26 Employees to work through their rest periods to satisfy the demanding workload duties
27 imposed by Defendant and/or DOES, thereby denying Plaintiff and the Aggrieved Employees
28 of the right to be completely free from employer control under California law.

1 117. Additionally, Defendant and/or DOES have a continuous policy and practice that fails to
2 provide Plaintiff and the Aggrieved Employees with rest periods “at the rate of ten (10) minutes
3 net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or
4 DOES do not provide Plaintiff and the Aggrieved Employees with rest periods consisting of
5 ten (10) minutes net rest time, nor does Defendant and/or DOES provide them with a rest
6 period per four (4) hours worked or major fraction thereof.

7 118. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per
8 day by Plaintiff and the Aggrieved Employees, and by failing to provide compensation for
9 these unprovided rest periods, as alleged above, Defendant and/or DOES willfully violate the
10 provisions of *California Labor Code* section 226.7.

11 119. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest
12 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
13 has satisfied all prerequisites to serve as a representative of the general public to enforce
14 California’s labor laws, and the penalty provisions identified in *California Labor Code* section
15 2699.5 for violations of *California Labor Code* section 226.7.

16 120. Plaintiff, as a non-exempt employee who was unlawfully deprived of paid ten (10)-minute rest
17 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
18 satisfied all prerequisites to serve as a representative of the general public to enforce
19 California’s labor laws, and the penalty provisions identified in *California Labor Code* section
20 2699.5.

21 121. Plaintiff, as a representative of the people of the State of California, will seek all penalties
22 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
23 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
24 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
25 226.7.

26 122. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
27 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
28 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the

1 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
2 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
3 *California Labor Code* section 2699(f)(2).

4 123. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
5 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
6 violations pursuant to this chapter or any provisions regulating hours and days of the week of
7 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
8 558(a)(2).

9 **FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
10 **PAGA for Failure to Pay Wages Due at Termination and During Employment (California Labor**
11 **Code §2698 et. seq.).**

12 124. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
13 as if fully plead.

14 125. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay,
15 in a timely manner, wages owed to Plaintiff and the Aggrieved Employees who left
16 Defendant's and/or DOES' employ or who were terminated.

17 126. Plaintiff and the Aggrieved Employees who ended their employment with Defendant and/or
18 DOES during the last year were entitled to be promptly paid all lawful compensation, and other
19 premiums, as required by *California Labor Code* sections 201 through 203.

20 127. At all relevant times, *California Labor Code* sections 201 and 202 provide that if an employer
21 discharges an employee, the wages earned and unpaid at the time of discharge are due and
22 payable immediately, and if an employee quits his or her employment, his or her wages shall
23 become due and payable no later than seventy-two (72) hours thereafter, unless the employee
24 has given seventy-two (72) hours' notice of his or her intention to quit, in which case the
25 employee is entitled to his or her wages at the time of quitting.

26 128. During the relevant time period, Defendant and/or DOES intentionally and willfully fail to pay
27 the Aggrieved Employees who are no longer employed by Defendant and/or DOES their
28 wages, that were earned and unpaid, within seventy-two (72) hours of their leaving

1 Defendant's and/or DOES' employ.

2 129. On information and belief, Defendant and/or DOES have a continuous policy of not providing
3 final paychecks to employees who are terminated or quit until Defendant's and/or DOES' next
4 regularly scheduled pay date.

5 130. Plaintiff's employment with Defendant and/or DOES terminated on or about February 7, 2023.
6 Yet, Plaintiff did not receive his final paycheck within seventy-two (72) hours of terminating
7 his employment with Defendant and/or DOES. Plaintiff did not receive his final paycheck until
8 the next regularly scheduled pay date, approximately one (1) week later.

9 131. Defendant and/or DOES have a continuous policy of not providing final paychecks to
10 employees who are terminated or quit until Defendant's and/or DOES' next regularly
11 scheduled pay date.

12 132. Defendant and/or DOES have a continuous policy of not providing final wages to employees
13 who are fired at the time of termination or who quit within seventy-two (72) hours of their
14 leaving Defendant's and/or DOES' employ. Defendant and/or DOES also require employees
15 to receive their final wages on Visa debit cards and does not provide the option for employees
16 to receive their final wages through a check or direct deposit.

17 133. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff
18 and Aggrieved Employees for all hours worked in that Defendant and/or DOES has not paid
19 for all the time Plaintiff and Aggrieved Employees worked throughout the day, including, but
20 not limited to rounding, before "shifts" start, after "shifts" end, during meal periods, and/or
21 any other time in the day when the employees were performing work tasks, subject to the
22 control of Defendant and/or DOES and/or otherwise had work duties that went unpaid.
23 Defendant and/or DOES further operate under a piece-rate plan that fails to separately
24 compensate for rest periods and/or nonproductive time. Also, Plaintiff and Aggrieved
25 Employees are not relieved of all duties and employer control during their meal periods, and,
26 thus, are owed wages for meal period time during which they are subject to Defendant's and/or
27 DOES' control and during which they are not free from all work duties. In addition, Defendant
28 and/or DOES failed to pay all meal and rest period premiums owed to Plaintiff and Aggrieved

- 1 Employees.
- 2 134. Defendant's and/or DOES' failure to pay Plaintiff and the Aggrieved Employees who are no
3 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, at the
4 time of termination or within seventy-two (72) hours of their leaving Defendant's and/or
5 DOES' employ, is in violation of *California Labor Code* sections 201 and 202.
- 6 135. *California Labor Code* section 203 provides that when an employer willfully fails to pay wages
7 owed, in accordance with *California Labor Code* sections 201 and 202, the wages of the
8 employee shall continue as a penalty from the due date thereof at the same rate until paid or
9 until and action is commenced; but the wages shall not continue for more than thirty (30) days.
- 10 136. Plaintiff, as a non-exempt employee who Defendant and/or DOES fail to pay all wages, failed
11 to provide a minimum statutory first and/or second meal periods, and failed to provide paid ten
12 (10) minute rest periods, is an aggrieved employee with standing to bring an action under the
13 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
14 enforce California's labor laws, and the penalty provisions identified in *California Labor Code*
15 section 2699.5.
- 16 137. Plaintiff, as a representative of the people of the State of California, seeks all penalties
17 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
18 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in
19 *California Labor Code* section 2699.5, which provides that section 2699.3(a) applies to any
20 alleged violation of the following provisions: sections 201 through 203.
- 21 138. Pursuant to *California Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on
22 behalf of himself and the other Aggrieved Employees, seeks recovery of applicable civil
23 penalties: one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
24 initial violation per *California Labor Code* section 2699(f)(2) and two hundred dollars
25 (\$200.00) for each Aggrieved Employee per pay period for each subsequent violation, per
26 *California Labor Code* section 2699(f)(2).
- 27 139. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
28 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for

violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *California Labor Code* section 558(a)(1) and 558(a)(2).

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (California Labor Code §2698 et. seq.).

140. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

141. *California Labor Code* section 226(a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the Aggrieved Employees. *California Labor Code* section 226(a) requires Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(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 only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

142. *California Labor Code* section 226, subdivision (a) also requires that “deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central

- location within the State of California.”
143. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period.” An employer complies with section 226(a) “if hours worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in the subsequently issue paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”
144. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) on each and every wage statement provided to Plaintiff and the Aggrieved Employees.
145. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the gross wages earned on wage statements. Defendant and/or DOES therefore knowingly and intentionally failed to itemize the gross wages earned on Plaintiff’s and the Aggrieved Employees’ wage statements throughout the relevant statute of limitations.
146. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the total hours worked on wage statements as *California Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include the total hours worked on wage statements. Defendant and/or DOES therefore knowingly and intentionally failed to itemize the total hours worked on Plaintiff’s and Aggrieved Employees’ wage statements. Further, Plaintiff and Aggrieved Employees are unable to determine the total hours worked based on the data provided on their wage statements.
147. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the Aggrieved Employees for all hours worked in that Defendant and/or DOES have not paid for all the time Plaintiff and Aggrieved Employees worked throughout the day, including, but not limited to

rounding, before “shifts” start, after “shifts” end, during meal periods, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties that went unpaid. Defendant and/or DOES further operate under a piece-rate plan that fails to separately compensate for rest periods and/or nonproductive time. Also, Plaintiff and Aggrieved Employees are not relieved of all duties and employer control during their meal periods, and, thus, are owed wages for meal period time during which they are subject to Defendant’s and/or DOES’ control and during which they are not free from all work duties. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to Plaintiff and Aggrieved Employees. As Defendant and/or DOES knew or had reason to know Plaintiff and Aggrieved Employees were owed compensation for this time, Defendant and/or DOES knowingly and intentionally failed to comply with *California Labor Code* section 226, subdivision (a).

148. Additionally, in every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not accurately itemize the total piece-rate units and the rate at which they were to be paid on wage statements as *California Labor Code* section 226, subsection (a), requires. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES, through its unlawful piece-rate policy, knowingly and intentionally would pay Plaintiff and Aggrieved Employees less than what they were promised for each piece-rate unit in order to satisfy its own minimum wage obligations. Defendant and/or DOES therefore knowingly and intentionally failed to accurately itemize the total piece-rate units and the rate at which they were to be paid on Plaintiff’s and Aggrieved Employees’ wage statements.

149. Further, in every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not include all applicable hourly rates on employees’ wage statements.

150. Defendant and/or DOES have also failed to correctly provide the name of the legal entity that employs Plaintiff and the Aggrieved Employees by citing their employer as “SACPROFLOORS.” There is no legal entity registered with the California Secretary of State

1 by that name. The closest legal entity registered with the California Secretary of State is “SAC
2 PROFLOORS.” Therefore, the legal entity employing Plaintiff and Aggrieved Employees
3 have not been itemized on their wage statements in compliance with *California Labor*
4 *Code* section 226(a).

5 151. In addition, throughout the Statutory Period, Defendant and/or DOES do not provide Plaintiff
6 and Aggrieved Employees with written notice that sets forth the amount of sick leave available
7 for use, either in Plaintiff’s and Aggrieved Employees’ itemized wage statements or in a
8 separate writing provided to employees on the designated pay date.

9 152. Throughout the relevant time period, because of the knowing and intentional failure by
10 Defendant and/or DOES to comply with itemized employee wage statement provisions,
11 Plaintiff and the Aggrieved Employees have been able to reconstruct only a reasonable
12 estimate of the hours worked and have, therefore, not received full compensation.

13 153. Plaintiff, as a non-exempt employee who Defendant and/or DOES fail to provide accurate and
14 itemized wage statements, is an aggrieved employee with standing to bring an action under the
15 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
16 enforce California’s labor laws, and the penalty provisions identified in *California Labor Code*
17 section 2699.5.

18 154. Plaintiff, as a representative of the people of the State of California, will seek all penalties
19 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
20 each of the following, as set forth in *California Labor Code* section 2699.5, which provides
21 that section 2699.3(a) applies to any alleged violation of the following provisions: sections
22 226, 1174, 1199.

23 155. Pursuant to Labor Code section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
24 himself and the other Aggrieved Employees, seeks recovery of applicable civil penalties: one
25 hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the initial violation
26 per Labor Code section 2699(f)(2) and two hundred dollars (\$200.00) for each Aggrieved
27 Employee per pay period for each subsequent violation, per *California Labor Code* section
28 2699(f)(2).

1 156. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
2 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
3 violations pursuant to this chapter or any provisions regulating hours and days of the week of
4 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
5 558(a)(2).

6 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
7 **Private Attorneys General Act of 2004 (PAGA) for Failure to Adopt a Compliant Sick Pay/Paid**
8 **Time Off Policy and Failure to Provide Written Notice Setting Forth the Amount of Sick Leave**
9 **Available (*California Labor Code* §2698 et. seq.).**

10 157. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
11 as if fully plead.

12 158. Section 246(a)(1) of the *California Labor Code* states: “An employee who, on or after July 1,
13 2015, works in California for the same employer for 30 or more days within a year from the
14 commencement of employment is entitled to paid sick days as specified in this section.”

15 159. *California Labor Code* section 246, subdivision (b)(1), provides, in pertinent part, “an
16 employee shall accrue paid sick days at the rate of not less than one hour per every thirty (30)
17 hours worked, beginning at the commencement of employment or the operative date of this
18 article, whichever is later.”

19 160. *California Labor Code* section 246(k) provides that, “[a]n employee may determine how much
20 paid sick leave they need to use, provided that an employer may set a reasonable minimum
21 increment, not to exceed two hours, for the use of paid sick leave.”

22 161. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid
23 sick days beginning on the 90th day of employment, after which day the employee may use
24 paid sick days as they are accrued.”

25 162. Section 233(c) of the *California Labor Code* states: “An employer shall not deny an employee
26 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any
27 manner discriminate against an employee for using, or attempting to exercise the right to use,
28 sick leave to attend to an illness or the preventive care of a family member, or for any other

- reason specified in subdivision (a) of Section 246.5.”
163. Section 233(d) of the *California Labor Code* provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”
164. Section 234 of the *California Labor Code* further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”
165. SAC PROFLOORS and/or DOES operate under an absence control policy that counts sick leave taken pursuant to Section 233 as an unauthorized absence that may result in discipline, discharge, demotion, or termination. Thus, SAC PROFLOORS and/or DOES’ sick pay policy punishes Plaintiff and Aggrieved Employees by way of suspension and/or termination for use of protected and appropriate sick leave. Plaintiff and the Aggrieved Employees are entitled to actual damages or one day’s pay pursuant to Labor Code Section 233(d).
166. Further, SAC PROFLOORS’s and/or DOES’ sick pay policy fails to pay sick pay for all appropriate and protected purposes enumerated in Labor Code section 233, 234, and 246.
167. Section 246(i) of the California Labor Code states, “[a]n employer shall provide an employee with written notice that sets forth the amount of sick leave available, or paid time off an employer provides in lieu of sick leave, for use on either the employee’s itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee’s payment of wages.”
168. SAC PROFLOORS and/or DOES fail to itemize sick leave available, or paid time off an employer provides in lieu of sick leave, for us on Plaintiff’s and the Aggrieved Employees’ itemized wage statements or in a separate writing provided on the designated pay date with the employee’s payment of wages.
169. SAC PROFLOORS’s and/or DOES’ sick pay policy fails to pay sick pay for all appropriate

- 1 and protected purposes enumerated in Labor Code sections 233, 234, 246, and 246.5, and SAC
2 PROFLOORS and/or DOES fail to itemize the amount of accrued/available sick leave
3 employees have on wage statements each pay period.
- 4 170. As a result of the unlawful acts of Defendant SAC PROFLOORS and/or DOES, Plaintiff and
5 the Aggrieved Employees he seeks to represent have been incurred damages, in amounts to be
6 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
7 thereon, attorneys' fees and costs, pursuant to Labor Code section 233(e).
- 8 171. Plaintiff, as a non-exempt employee who was subject to Defendant's and/or DOES' unlawful
9 sick pay/paid time off policy, is an aggrieved employee with standing to bring an action under
10 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
11 public to enforce California's labor laws, and the penalty provisions identified in *California*
12 *Labor Code* section 2699.5 for violations of the *California Labor Code* sections 233, 234, 246,
13 and 246.5.
- 14 172. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other
15 Aggrieved Employees, seeks penalties pursuant to *California Labor Code* section 558 for
16 violations pursuant to this chapter or any provisions regulating hours and days of the week of
17 the Industrial Welfare Commission under *California Labor Code* sections 558(a)(1) and
18 558(a)(2).

19 **PRAYER FOR RELIEF**

20 WHEREFORE, Plaintiff, individually and on behalf of all other Aggrieved Employees, prays
21 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 22 A. For penalties as provided under *California Labor Code* sections 558(a)(1) and 558(a)(2).
23 B. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
24 2699, et. seq. for failure to provide compliant meal periods;
25 C. For all statutory penalties for each pay period during which an employee was underpaid due to
26 failure to provide compliant meal periods;
27 D. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
28 2699, et. seq. for failure to provide all rest periods;

- 1 E. For all statutory penalties provided under *California Labor Code* for each pay period during
2 which an employee was underpaid due to failure to provide paid rest periods;
- 3 F. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
4 2699, et. seq. for failure to timely pay wages at separation;
- 5 G. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
6 2699, et. seq. for failure to provide compensation at the regular and overtime rate for all time
7 worked;
- 8 H. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
9 2699, et. seq. for failure to provide compensation at the minimum wage;
- 10 I. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
11 2699, et. seq. for failure to provide accurate, itemized wage statements;
- 12 J. For penalties as provided, per each violation, by the PAGA, *California Labor Code* section
13 2699, et. seq. for failure to adopt a lawful sick pay policy;
- 14 K. For reasonable attorneys' fees and costs under the PAGA, *California Labor Code* section
15 2699(g)(1).

16 **DEMAND FOR JURY TRIAL**

17 Plaintiff demands a jury trial as to liability.

18 **MARA LAW FIRM, PC**

19
20
21 Date: July 27, 2023

Signed: 

David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff MANUEL BALUX

OCH, on behalf of himself and all others

similarly situated, and on behalf of the general
public