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<u>SUBMITTED VIA LWDA'S PAGA CLAIM NOTICE ONLINE PORTAL</u>

<u>COPY SENT VIA CERTIFIED MAIL TO:</u>

AARON'S, LLC.
400 GALLERIA PARKWAY SE, SUITE 300
ATLANTA, GA 30339

C/O CSC - LAWYERS INCORPORATING SERVICE
2710 GATEWAY OAKS DRIVE, SUITE 150N
SACRAMENTO, CA 95833

Re: <u>*Joshua Hodges v. AARON'S, LLC.*</u>
<u>*Notice of Intent to File Suit for California Labor Code § 2698 et seq. Penalties*</u>

To Whom It May Concern:

This office and Falakassa Law, P.C. represent Joshua Hodges (hereinafter "Mr. Hodges") and a proposed group of current and former non-exempt employees working for AARON'S, LLC. (hereinafter "AARON'S") and any of its affiliated, predecessor, and merged entities in the State of California for violations of the California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1194, 1194.2, 1197.1, 1199, 2802-2804, and all applicable Industrial Welfare Commission Wage Orders ("Wage Order").

This letter shall serve as notification under Labor Code § 2699.3 (hereinafter "PAGA Notice"). The $75 filing fee payable to the California Labor and Workforce Development Agency for the Private Attorneys General Act Notice ("PAGA Notice") was paid online. A copy of this PAGA Notice was submitted electronically to the Department of Industrial Relations.

Mr. Hodges wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following group of "aggrieved employees":

> All current and former non-exempt hourly employees who work or worked for AARON'S, LLC. in California during the one year immediately preceding the filing of this PAGA Notice and continuing into the present and ongoing ("aggrieved employees")

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AARON'S is a technology-enabled, omnichannel retailer that provides rent-to-own and retail purchase solutions for furniture, electronics, appliances, and other home goods.

Mr. Hodges was employed by AARON'S as a non-exempt employee with the title of "Delivery Driver / Product Technician" from June 3, 2024, to July 30, 2025. Based in Modesto, California, Mr. Hodges was responsible for a variety of tasks, including preparing furniture for delivery, delivering it to customers, and carrying products. Alongside Mr. Hodges, other non-exempt employees played a crucial role in maintaining the efficiency and productivity of AARON'S operations. These employees included, but were not limited to:

- **HVAC Technician**, who installs, maintains, and repairs heating, ventilation, air conditioning, and refrigeration systems.
- **Furniture Installer,** who loads and unloads furniture, assembles and installs various pieces according to blueprints or instructions, and cleans up the job site afterward.
- **Fleet Mechanic,** who diagnoses, repairs, and maintains a company's vehicles and equipment to ensure they operate safely and efficiently.
- **Electronics Technician**, who is responsible for installing, maintaining, and repairing electronic systems and components.

These aggrieved employees were responsible for a wide range of tasks critical to the company's operations, including installing and maintaining equipment, providing customer service, and providing overall retailer services. Their work ensured the effective operation of AARON'S assets. Despite the essential nature of their contributions, Mr. Hodges and other aggrieved employees allege that AARON'S failed to comply with the California Labor Code, including, but not limited to, proper wage payment and the provision of meal and rest periods, as set forth below.

At all relevant times, Mr. Hodges and other aggrieved employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Mr. Hodges alleges that other aggrieved employees were also subjected to the same policies, procedures, practices, working conditions, and corresponding wage-and-hour violations that he experienced during his employment.

First, at all relevant times, AARON'S has consistently failed to accurately record and pay for all time worked, including time under which aggrieved employees were subject to the employer's control. This included a policy and practice of failing to accurately record and capture the time of aggrieved employees, including all time spent working off the clock. As a result of this company-wide policy/practice, Mr. Hodges and other aggrieved employees are not compensated for all the hours that they work and all of the overtime hours they work, in violation of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

As a result, Mr. Hodges and other aggrieved employees were not adequately paid for all hours worked in violation of Cal. Labor Code §§ 204, 210, 1194, 1197.1, 1199, and applicable Wage Orders.

Additionally, due to the unlawful timekeeping policy/practices, Mr. Hodges and other aggrieved employees were not paid the correct overtime rate for hours worked in excess of eight hours per shift, in violation of Labor Code § 510.

Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law or by order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

Accordingly, through PAGA and to the extent permitted by law, Mr. Hodges and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Furthermore, at all relevant times, Mr. Hodges and other non-exempt employees worked regular shifts that lasted longer than 8.0 hours in a workday and more than 40 hours in a workweek. However, Mr. Hodges and other non-exempt employees were not properly paid at the correct overtime rate for all overtime hours worked due to AARON'S uniform failure to include all forms of compensation/remuneration, including, but not limited to, shift pay, non-discretionary bonuses, commissions, stipends, incentives, and all other forms of remuneration in calculating the "regular rate of pay" for purposes of overtime compensation.

Under the California Labor Code (as well as the FLSA), courts have consistently held that regularly paid non-discretionary bonuses (and other forms of pay) must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (See *Haber v. The*

Americana Corp. 378 F. 2d 854, 855-856 (9th Cir. 1967) [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. 435 F. Supp. 2d 1042, 1055-1057 (C.D. Cal. 2006) [granting summary judgment to Plaintiff under California and federal law on the grounds that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties but an actual fact. Once the parties have decided upon the amount of wages and the mode of payment, the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); see also 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8.0) hours in one workday, forty (40.0) hours in a workweek, and for the first eight (8.0) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12.0) hours in a workday or more than eight (8.0) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8.0) hours in any workday or more than 40.0 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

By their policy of requiring aggrieved employees to work in excess of eight (8) hours in a workday and/or forty (40.0) hours in a workweek without compensating them at the rate of one-half (11/2) their regular rate of pay, AARON'S willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

Accordingly, through PAGA and to the extent permitted by law, Mr. Hodges and other aggrieved employees are entitled to recover penalties for violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199 1197.1 under Labor Code § 1197.1, 1199, or Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Similarly, at all relevant times, AARON'S also failed in its obligation to provide Mr. Hodges and other aggrieved employees the legally required paid sick days at the legal rate pursuant to Labor Code §§ 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."

Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Finally, Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave 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."

Here, at all relevant times, AARON'S failed in its obligation to provide Mr. Hodges and other aggrieved employees the legally required paid sick days at the "regular rate of pay," including all forms of compensation, pursuant to Labor Code §§ 246(a), (b). As such, AARON'S paid sick time below his base rate of pay rather than the "regular rate of pay" as required by Labor Code §§ 246(l) (1-2).

Based on the foregoing Labor Code violations, Mr. Hodges seeks all civil and statutory penalties available and applicable under Labor Code § 2699(f)(2), and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Moreover, at all relevant times, Mr. Hodges and other aggrieved employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to AARON'S uniform meal period policies/practices, operational requirements and work demands, Mr. Hodges and other aggrieved employees often could not take timely and uninterrupted net 30-minute first meal periods before the end of the fifth hour of work. Further, when Mr. Hodges and other aggrieved employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders. Indeed, Mr. Hodges' and other aggrieved employees' meal periods were often interrupted and lasted fewer than 30 minutes due to AARON'S meal period policies/procedures, operational requirements, and work demands.

In addition, for each missed or non-compliant meal period, AARON'S failed and continues to fail to maintain a mechanism by which aggrieved employees were paid meal period premiums at the "regular rate of pay" pursuant to *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 5th 858 and Labor Code § 226.7.

Accordingly, due to AARON'S uniform meal period practices, Mr. Hodges and other aggrieved employees were also regularly denied legally compliant meal periods in violation of Labor Code 226.7, 510, 516, and applicable IWC Wage Orders and are entitled to penalties under Labor Code § 2699(f)(2).

Next, at all relevant times, Mr. Hodges and other aggrieved employees were not provided with all 10-minute rest periods for every four hours worked, or a major fraction thereof, due to AARON'S uniform rest period policies/practices, operational requirements and work demands. As a result, Mr. Hodges and other aggrieved employees were and are often unable to take a net 10-

minute duty-free rest period for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday.

By not relieving all non-exempt employees of all duties during rest periods, AARON'S failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273. Each time Mr. Hodges and other aggrieved employees could not take a compliant rest period, AARON'S failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

Accordingly, due to AARON'S uniform rest period policies/practices and work demands, Mr. Hodges and other aggrieved employees were also regularly denied legally compliant rest breaks in violation of Labor Code §§ 226.7, 512, and applicable Wage Orders and would be entitled to penalties under Labor Code § 2699(f)(2).

As a result of AARON'S failure to pay Mr. Hodges and other aggrieved employees for all hours they were subject to the control of AARON'S including all minimum, overtime and sick pay wages, and AARON'S failure to pay for meal and rest period premiums at the "regular rate of pay," AARON'S issued wage statements which failed to identify the gross wages earned accurately, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1, 2, 5, and 9).

Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

Thus, for the violations of Labor Code section 226 described above, Mr. Hodges and other aggrieved employees may also recover Labor Code § 226.3 penalties for AARON'S violations of Labor Code § 226(a). Consequently, because AARON'S failed to comply with Labor Code § 226(a), Mr. Hodges and other aggrieved employees would be entitled to recover penalties under Labor Code §§ 226(e) or Labor Code § 2699(f)(2).

Moreover, because AARON'S failed to pay all minimum, overtime and sick pay wages, and meal and rest period premiums at the "regular rate of pay," It also failed and continues to fail to pay the aggrieved employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203. Thus, aggrieved employees would be entitled to recover penalties under Labor Code §§ 201-203 or Labor Code § 2699(f)(2).

Finally, at all relevant times, AARON'S required Mr. Hodges and other aggrieved employees to incur necessary business expenses for work-related purposes, but did not adequately reimburse these employees for these necessary expenditures, thereby violating Labor Code §§ 2802-2804. Here, AARON'S uniformly failed to reimburse aggrieved employees for all necessary costs incurred in discharging their duties. (*See Cochran v. Schwan's Home Service, Inc.,* (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person or at all...To show liability under section 2802, an employee needs only to show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed"].) Accordingly, due to AARON'S uniform failure to adequately reimburse for necessary business expenditures in violation of Labor Code §§ 2800-2802 and applicable Wage Orders, Mr. Hodges and other aggrieved employees would be entitled to civil penalties under Labor Code § 2699(f)(2) and attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

Pursuant to Labor Code § 2699.3(a)(2)(A), please advise within sixty-five (65) calendar days of the date of this notice whether your office intends to investigate the violations alleged hereinabove. We understand that if we do not receive a response from your office within sixty-five (65) calendar days of this PAGA Notice, Mr. Hodges may thereafter pursue his interests and the interests of similarly aggrieved employees with a civil complaint against AARON'S for its violations of the California Labor Code and applicable Wage Orders.

While we intend to pursue a PAGA representative and/or Class Action lawsuit against AARON'S for unpaid wages and civil penalties under Labor Code § 2699, it is our firm's policy to attempt to negotiate an early resolution of all matters where possible and beneficial to all aggrieved employees. If AARON'S is interested in resolving this matter, please contact me or have your lawyer contact our office to discuss an informal discovery plan and the possibility of early mediation on or before **December 15, 2025.**

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Respectfully submitted,

FALAKASSA LAW, P.C.
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