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Attorneys for Plaintiff DANIEL A VASQUEZ,
on behalf of himself and current and former aggrieved employees,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES-CENTRAL DISTRICT**

DANIEL A VASQUEZ, on behalf of himself and
current and former aggrieved employees,

Plaintiff,

vs.

ELA FOODS, INC. dba POPEYES
LOUISIANA KITCHEN; POP FOOD
SERVICES, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: **23STCV20790**

PAGA ACTION

**PLAINTIFF DANIEL A VASQUEZ'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff DANIEL A VASQUEZ ("Plaintiff"), who alleges and complains
against Defendants ELA FOODS, INC. dba POPEYES LOUISIANA KITCHEN; POP FOOD
SERVICES, INC.; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-

1 exempt employees in California during the relevant time period seeking civil penalties associated
2 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
3 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
4 required and legally compliant meal and rest periods, failure to pay wages for accrued paid sick
5 time at the regular rate of pay, failure to pay indemnification for all necessary expenditures or
6 losses incurred by employees in direct consequence of discharging their duties, failure to timely
7 pay earned wages during employment, failure to provide complete and accurate wage statements,
8 failure to timely pay all unpaid wages following separation of employment, failure to maintain
9 temperatures providing reasonable comfort, and failure to provide suitable seating. Plaintiff seeks
10 on a representative basis, following notice to the Labor and Workforce Development Agency, civil
11 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
12 on behalf of Plaintiff, the State of California, and others aggrieved.

13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
15 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
16 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
17 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
18 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
19 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
20 aggrieved California-based hourly non-exempt employees occurred in locations throughout
21 California, including but not limited to Los Angeles County, at 1451 Cordova Ave., Glendale,
22 California 91207.

23 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
24 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
25 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
26 tolled from April 6, 2020, until October 1, 2020.

27 **III. PARTIES**

28 4. Plaintiff brings this action as a representative of the Labor and Workforce

1 Development Agency on behalf of himself and other current and former employees subject to
2 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
3 filed include current, former and/or future employees of Defendants who work, worked, or will
4 work for Defendants as direct employees as well as temporary employees employed through temp
5 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
6 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
7 employed by Defendants in an hourly position at Defendants' location in Los Angeles from
8 approximately September 26, 2015 until on or about June 30, 2022.

9 5. Plaintiff is informed and believes and thereon alleges that Defendant ELA FOODS,
10 INC. dba POPEYES LOUISIANA KITCHEN is authorized to do business within the State of
11 California and is doing business in the State of California and/or that Defendants DOES 1-25 are,
12 and at all times relevant hereto were persons acting on behalf of Defendant ELA FOODS, INC.
13 dba POPEYES LOUISIANA KITCHEN in the establishment of, or ratification of, the
14 aforementioned illegal wage and hour practices or policies. Defendant ELA FOODS, INC. dba
15 POPEYES LOUISIANA KITCHEN operates in Los Angeles County and employed Plaintiff and
16 aggrieved employees in Los Angeles County including but not limited to, at 1451 Cordova Ave.,
17 Glendale, CA 91207.

18 6. Plaintiff is informed and believes and thereon alleges that Defendant POP FOOD
19 SERVICES, INC is authorized to do business within the State of California and is doing business
20 in the State of California and/or that Defendants DOES 26-50 are, and at all times relevant hereto
21 were persons acting on behalf of Defendant POP FOOD SERVICES, INC in the establishment of,
22 or ratification of, the aforementioned illegal wage and hour practices or policies. Defendant POP
23 FOOD SERVICES, INC operates in Los Angeles County and employed Plaintiff and aggrieved
24 employees in Los Angeles County including but not limited to, at 1451 Cordova Ave., Glendale,
25 CA 91207.

26 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
27 through 50 are corporations, or are other business entities or organizations of a nature unknown to
28 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted

1 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
2 working conditions of employment of Plaintiff and aggrieved employees.

3 8. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
4 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
5 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
6 supervisor, independent contractor and/or employee of each defendant who violated or caused to
7 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
8 the Industrial Welfare Commission's wage orders regulating hours and days of work.

9 9. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
10 sues said defendants by said fictitious names, and will amend this complaint when the true names
11 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
12 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
13 named defendants is in some manner responsible for the events and allegations set forth in this
14 complaint.

15 10. Plaintiff makes the allegations in this complaint without any admission that, as to
16 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
17 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

18 **FIRST CAUSE OF ACTION**

19 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
20 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

21 **(Against all Defendants by Plaintiff)**

22 11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

23 12. During Plaintiff's employment and continuing through the present, Plaintiff alleges
24 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194,
25 1197, 2802 and the applicable Wage Orders.

26 13. Specifically, Defendants have committed the following violations of California
27 Labor Code:

28 14. **Failure to pay wages for all hours worked at the legal minimum wage:**

1 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
2 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
3 which includes all time that an employee is under control of the employer and all time the
4 employee is suffered and permitted to work. This includes the time an employee spends, either
5 directly or indirectly, performing services which inure to the benefit of the employer.

6 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
7 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
8 Wage Orders.

9 16. In this case, Plaintiff and other current and former aggrieved California-based
10 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
11 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
12 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
13 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
14 not limited to:

15 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
16 non-exempt employees to go to the bank and exchange cash for the registers after clocking-out for
17 the end of their shift; and

18 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
19 non-exempt employees to go buy products for use in Defendants’ stores while off-the-clock.

20 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
21 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
22 control without paying wages for that time. This resulted in Plaintiff and other current and former
23 aggrieved California-based hourly non-exempt employees working time for which they were not
24 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
25 Wage Order.

26 18. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
27 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
28 employees. In California, an employer is required to pay hourly employees for all “hours worked,”

1 which includes all time that an employee is under control of the employer and all time the
2 employee is suffered and permitted to work. This includes the time an employee spends, either
3 directly or indirectly, performing services that inure to the benefit of the employer.’

4 19. Labor Code sections 510 and 1194 require an employer to compensate employees a
5 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
6 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

7 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
8 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
9 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
10 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
11 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
12 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
13 seventh day of a workweek shall be compensated at the rate of no less than twice the
14 regular rate of pay of an employee.

15 Labor Code section 510.

16 20. In this case, Defendants failed to pay Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
18 worked due to Defendants’ policies, practices, and/or procedures including, but not limited to:

19 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
20 non-exempt employees to go to the bank and exchange cash for the registers after clocking-out for
21 the end of their shift; and

22 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
23 non-exempt employees to go buy products for use in Defendants’ stores while off-the-clock.

24 21. Overtime is based upon an employee’s regular rate of pay. “The regular rate at
25 which an employee is employed shall be deemed to include all remuneration for employment paid
26 to, or on behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement
27 Policies and Interpretations Manual, Section 49.1.2.

28 22. In this case, Plaintiff alleges that when he and other current and former aggrieved
California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
them overtime wages at the proper overtime rate of pay due to Defendants’ failure to include all
remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a

1 policy, practice, and/or procedure of failing to include all remuneration such as “bonus pay,” for
2 example, when calculating Plaintiff’s and other current and former aggrieved California-based
3 hourly non-exempt employees’ regular rate of pay for the purpose of paying overtime.

4 23. The foregoing policies, practices, and/or procedures resulted in time during each
5 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
6 employees were under the control of Defendants but were not compensated. To the extent that the
7 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
8 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
9 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
10 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
11 sections 510 and 1194 and the applicable Wage Order.

12 24. **Failure to pay wages to hourly non-exempt employees for workdays that**
13 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
14 current and former aggrieved California-based hourly non-exempt employees regularly worked
15 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

16 25. California law requires an employer to authorize or permit an employee an
17 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
18 all duties and the employer relinquishes control over the employee’s activities prior to the
19 employee’s sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*
20 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
21 employee for a work period of more than ten (10) hours per day without providing the employee
22 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
23 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
24 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
25 period is only permitted when: (1) the nature of the work prevents an employee from being
26 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

27 26. If an employer fails to provide an employee a meal period in accordance with the
28 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay

1 for each workday that a legally required and compliant meal period was not provided. Labor Code
2 section 226.7; Wage Order 4 at §11.

3 27. In this case, Defendants failed to authorize or permit legally required and compliant
4 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
5 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
6 limited to:

7 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
8 hourly non-exempt employees with timely, uninterrupted, duty-free meal breaks of at least 30
9 minutes for every five hours worked.

10 28. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
11 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
12 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
13 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
14 employees did not receive legally required and compliant meal periods, in violation of Labor Code
15 section 226.7.

16 29. Finally, on occasions when Defendants paid Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed,
18 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
19 additional hour of pay at Plaintiff's and other current and former aggrieved California-based
20 hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained
21 a policy, practice, and/or procedure of failing to include all remuneration such as "bonus pay," for
22 example, when calculating Plaintiff's and other current and former aggrieved California-based
23 hourly non-exempt employees' regular rate of pay for the purpose of paying meal period premium
24 wages.

25 30. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
26 and other current and former aggrieved California-based hourly non-exempt employees not
27 receiving wages to compensate them for workdays during which Defendants did not provide them
28 with meal periods in compliance with California law.

1 31. **Failure to pay wages to hourly non-exempt employees for workdays that**
2 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
3 current and former aggrieved California-based hourly non-exempt employees regularly worked
4 shifts of more than three-and-a-half (3.5) hours.

5 32. California law requires every employer to authorize and permit an employee a rest
6 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
7 Code section 226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10
8 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
9 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
10 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
11 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
12 each work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates
13 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
14 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
15 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

16 33. If the employer fails to authorize or permit a required rest period, the employer
17 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
18 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
19 Wage Order 4 at § 12.

20 34. In this case, Defendants failed to authorize or permit all legally required and
21 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
22 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
23 limited to:

24 (a) Failing to provide Plaintiffs and other current and former aggrieved California-
25 based hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours
26 worked or major fraction thereof.

27 35. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
28 procedure of failing to compensate Plaintiff and other current and former aggrieved California-

1 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
2 workday they did not receive legally required and compliant rest periods, in violation of Labor
3 Code section 226.7.

4 36. Finally, on occasions when Defendants did pay Plaintiff and other current and
5 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
6 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
7 one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-
8 based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants
9 maintained a policy, practice, and/or procedure of failing to include all remuneration such as
10 “bonus pay,” for example, when calculating Plaintiff’s and other current and former aggrieved
11 California-based hourly non-exempt employees’ regular rate of pay for the purpose of paying rest
12 period premiums.

13 37. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
14 and other current and former aggrieved California-based hourly non-exempt employees not
15 receiving wages to compensate them for workdays in which Defendants did not provide them with
16 rest periods in compliance with California law.

17 38. **Failure to pay wages for accrued paid sick days at the regular rate of pay:**
18 Defendants had a policy and/or procedure where Plaintiff and other current and former aggrieved
19 California-based hourly non-exempt employees accrued paid sick time.

20 39. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
21 who...works in California for the same employer for 30 or more days within a year from the
22 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
23 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
24 beginning at the commencement of employment. Labor Code section 246(b).

25 40. Here, Plaintiff and other current and former aggrieved California-based hourly non-
26 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
27 sick days. Also, Plaintiff and other current and former aggrieved California-based hourly non-
28 exempt employees began accruing paid sick days since the beginning of each of their respective

1 employment with Defendants.

2 41. Labor Code section 246, subdivision (l), provides that an employer shall calculate
3 the paid sick time for non-exempt employees in the same manner as the regular rate of pay for the
4 workweek in which the employee elected to use paid sick time. “The regular rate at which an
5 employee is employed shall be deemed to include all remuneration for employment paid to, or on
6 behalf, of the employee.” See Division of Labor Standards Enforcement – Enforcement Policies
7 and Interpretations Manual, Section 49.1.2.

8 42. In this case, Plaintiff alleges that when he and other current and former aggrieved
9 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
10 pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include
11 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
12 policy, practice, and/or procedure of failing to include all remuneration such as “bonus pay,” for
13 example, when calculating Plaintiff’s and other current and former aggrieved California-based
14 hourly non-exempt employees’ regular rate of pay for the purpose of paying sick time.

15 43. Defendants’ foregoing policy, practice, and/or procedure resulted in Defendants
16 failing to pay Plaintiff and similarly situated employees at their sick time regular rate of pay for all
17 sick time accrued, in violation of Labor Code section 246.

18 44. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**
19 **Employment:** California law requires that every employer must indemnify its employees for all
20 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at
21 the obedience of the directions of the employer. Moreover, an employer is prohibited from passing
22 the ordinary business expenses and losses of the employer onto the employee. (Lab. Code, §
23 2802.)

24 45. Defendants have violated Labor Code Section 2802 by failing to indemnify
25 Plaintiff and other current and former aggrieved California-based non-exempt hourly employees’
26 necessary expenditures they incurred in the discharge of their duties. Specifically, Defendants
27 employed a policy, practice, and procedure whereby Plaintiff and aggrieved employees were
28 required to use their personal vehicle for work-related purposes without reimbursement despite

1 that the IRS mileage rate during the relevant time period ranged between 53.5 cents per mile and
2 58 cents per mile.

3 46. Moreover, Defendants employed policies and procedures which ensured Plaintiff
4 and aggrieved employees would not receive indemnification for their employment related
5 expenses. This practice resulted in Plaintiff and aggrieved employees not receiving such
6 indemnification in compliance with California law.

7 47. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
8 employment related expenses, including but not limited to costs related to use of their personal
9 cell phones and costs associated with their uniforms pursuant to Labor Code section 2802.

10 48. **Failure to timely pay earned wages during employment:** In California, wages
11 must be paid at least twice during each calendar month on days designated in advance by the
12 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
13 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
14 16th and the 26th day of that month and wages earned between the 16th and the last day,
15 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
16 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
17 paid within seven (7) calendar days following the close of the payroll period in which wages were
18 earned. Labor Code section 204(d).

19 49. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
20 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
21 exempt employees' earned wages (including minimum wages, overtime wages, meal period
22 premium wages, and/or rest period premium wages), in violation of Labor Code section 204.
23 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
24 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
25 their earned wages within the applicable time frames outlined in Labor Code section 204.

26 50. **Failure to provide complete and accurate wage statements:** Labor Code section
27 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
28 employee his or her wages, the employer must "furnish each of his or her employees ... an

1 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
4 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
5 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
6 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
7 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
8 name of the employee and his or her social security number, (8) the name and address of the legal
9 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
10 the corresponding number of hours worked at each hourly rate by the employee.”

11 51. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
12 and other current and former aggrieved California-based hourly non-exempt employees all wages
13 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
14 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
15 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
16 section 226.

17 52. **Failure to pay employees all wages due at time of termination/resignation:** An
18 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
19 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
20 hours of resignation (Labor Code section 202).

21 53. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
22 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
23 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
24 and/or rest period premium wages), Defendants failed to pay those employees timely after each
25 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

26 54. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
27 employee, on behalf of himself or herself and other current or former employees, to bring a civil
28 action to recover civil penalties against all Defendants pursuant to the procedures specified in

1 Labor Code section 2699.3.

2 55. Plaintiff has complied with the procedures for bringing suit specified in Labor
3 Code section 2699.3. On June 23, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and
4 provided notice to Defendants by certified mail which provided notice of the specific provisions of
5 the Labor Code alleged to have been violated, including the facts and theories to support the
6 violations alleged.

7 56. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
8 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
9 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
10 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
11 to investigate Plaintiff's claims.

12 57. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
13 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 246,
14 510, 512, 1194, 1197, and 2802, During Plaintiff's employment and continuing through the
15 present, preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in
16 the following amounts:

17 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512 , and
18 2802; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
19 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
20 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

21 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
22 for each employee for each pay period for the initial violation, and for each subsequent violation,
23 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
24 established by Labor Code section 226.3].

25 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
26 employee for each pay period for the initial violation, and for each subsequent violation, one
27 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
28 established by Labor Code section 558].

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1].

58. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to those recoverable under the California Labor Code, including but not limited to section 2699(f);

3. For attorneys' fees and costs of suit, including but not limited to those recoverable under California Labor Code section 2699(g); and

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: August 29, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: 

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DANIEL A VASQUEZ
on behalf of himself and current and former
aggrieved employees