

MELMED LAW GROUP P.C.

Jonathan Melmed (SBN 290218)

jm@melmedlaw.com

Megan E. Ross (SBN 227776)

megan@melmedlaw.com

Hannah Becker (SBN 345452)

hb@melmedlaw.com

1801 Century Park East, Suite 850

Los Angeles, California 90067

Phone: (310) 824-3828

Fax: (310) 862-6851

FILED
Superior Court of California
County of Alameda

12/14/2023

Clad Fike, Executive Officer / Clerk of the Court

By: *D. Oliver* Deputy
D. Oliver

Attorneys for Plaintiff, the Putative Class, and the Aggrieved Employees

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

MANUEL ROSILLO, an individual, on behalf
of himself, the State of California, as a private
attorney general, and on behalf of all others
similarly situated,

Plaintiff,

v.

PACIFIC AGRI-PRODUCTS, INC., a
California Corporation; and DOES 1 TO 50,

Defendants.

Case Number: 23CV036593

**First Amended Class and Representative
Action Complaint For:**

1. Penalties Pursuant to the Labor Code Private Attorneys General Act of 2004 ("PAGA") for Willful Misclassification in Violation of Labor Code sections 226.8 and 2775,
2. Failure to Pay All Overtime Wages,
3. Failure to Pay Wages Timely during Employment,
4. Violations of California's Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210), and
5. Penalties Pursuant to PAGA for Violations of California Labor Code Sections 204, 210, 510, 1185, 1198, 1199, and Other Provisions of the Labor Code.

Demand for Jury Trial

1 Plaintiff Manuel Rosillo (“Plaintiff”), on behalf of himself, the State of California, as a private
2 attorney general, and all other similarly situated employees within the State of California, complains
3 and alleges of defendants Pacific Agri-Products, Inc. and Does 1 to 50 (collectively, “Defendants”),
4 and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action complaint brought pursuant to California Code of Civil Procedure
7 section 382.

8 2. The “Class Period” as used herein, is defined as the period from June 22, 2019, and
9 continuing into the present and ongoing. Defendants’ violations of California’s laws as described more
10 fully below have been ongoing throughout the Class Period and are still ongoing.

11 3. Plaintiff brings this class action on behalf of himself and the following class: *All*
12 *individuals who are or were employed by Defendants as non-exempt employees in California during*
13 *the Class Period* (the “Class Members”). (Code Civ. Proc., § 382.)

14 4. Plaintiff brings this action on behalf of himself and the Class Members, as a class action,
15 against Defendants for:

16 A. Failure to pay all overtime wages,

17 B. Failure to pay wages timely during employment,

18 C. Violations of California’s Unfair Competition Law (“UCL”) (Bus. & Prof.
19 Code, §§ 17200–17210).

20 5. This action is also a representative action brought pursuant to the California Labor Code
21 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
22 through 2699.6.

23 6. The “PAGA Period” as used herein, is defined as the period from June 22, 2022, and
24 continuing into the present and ongoing.

25 7. This PAGA action is brought on behalf of Plaintiff, the State of California as private
26 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
27 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
28 “Aggrieved Employees”).

1 8. Plaintiff is informed and believes and thereon alleges that the California Industrial
2 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
3 1-2001, 4-2001, 8-2001, and/or 13-2001 (the “Applicable Wage Orders”) and possibly others that may
4 be applicable. (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130.) Plaintiff reserves the right
5 to amend or modify the definition of “Applicable Wage Orders” with greater specificity or add
6 additional IWC Wage Orders if additional applicable wage orders are discovered in litigation.

7 **II. JURISDICTION & VENUE**

8 9. This Court has subject matter jurisdiction over all causes of action asserted herein
9 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
10 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
11 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
12 is subject to adjudication in the courts of the State of California.

13 10. This Court has personal jurisdiction over Defendants because Defendants have caused
14 injuries in the County of Alameda and the State of California through their acts, and by their violation
15 of the California Labor Code and California state common law. Defendants transact millions of dollars
16 of business within the State of California. Defendants own, maintain offices, transact business, have an
17 agent or agents within the County of Alameda, and/or otherwise are found within the County of
18 Alameda, and Defendants are within the jurisdiction of this Court for purposes of service of process.

19 11. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
20 Code of Civil Procedure. Defendants operate within California and do business within Alameda
21 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
22 Defendants’ employees identified above within Alameda County and surrounding counties where
23 Defendants may remotely operate.

24 12. This matter is not appropriate for removal under the Class Action Fairness Act (28
25 U.S.C. § 1332) as the amount in controversy for Plaintiff’s and the Class Members’ claims, in
26 aggregate, is less than \$5 million. Additionally, all the allegations herein occurred in the State of
27 California. As such, even if the amount in controversy did exceed \$5 million this matter would still not
28

1 be appropriate for removal under the “local controversy” exception to the Class Action Fairness Act.
2 (28 U.S.C. § 1332, subd. (d)(4)(A).)

3 **III. THE PARTIES**

4 **A. PLAINTIFF**

5 13. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
6 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
7 employee in the County of Alameda.

8 14. Plaintiff brings this action on behalf of himself and the following class pursuant to
9 section 382 of the Code of Civil Procedure as follows: *All individuals who are or were employed by*
10 *Defendants as non-exempt employees in California during the Class Period* (the “Class Members”).

11 15. Plaintiff also brings this action on behalf of himself and the State of California, as a
12 private attorney general, and on behalf of the following group of aggrieved employees: *All individuals*
13 *who are or were employed by Defendants as non-exempt employees in California during the PAGA*
14 *Period* (the “Aggrieved Employees”).

15 16. The Class Members and the Aggrieved Employees, at all times pertinent hereto, are or
16 were employees of Defendants during the relevant statutory period.

17 **B. DEFENDANTS**

18 17. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
19 to and doing business in Alameda County and is and/or was the legal employer of Plaintiff, the other
20 Aggrieved Employees, and the other Class Members during the applicable statutory periods. Plaintiff,
21 the other Aggrieved Employees, and the other Class Members were, and are, subject to Defendants’
22 policies and/or practices complained of herein and have been deprived of the rights guaranteed to them
23 by: California Labor Code sections 204, 210, 226.8, 510, 1185, 1198, 1199, 2775, and others that may
24 be applicable; California Business and Professions Code sections 17200 through 17210 (“UCL”); and
25 the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130).

26 18. Plaintiff is informed and believes, and based thereon alleges, that during the Class
27 Period and PAGA Period, Defendants did (and continue to do) business in the State of California,
28 County of Alameda.

1 19. Plaintiff does not know the true names or capacities, whether individual, partner, or
2 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
3 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
4 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
5 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
6 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff,
7 the other Aggrieved Employees, and the other Class Members to be subject to the unlawful employment
8 practices, wrongs, injuries, and damages complained of herein.

9 20. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
10 herein, Defendants were and/or are the employers of Plaintiff, the other Aggrieved Employees, and the
11 other Class Members. At all times herein mentioned, each of said Defendants participated in the doing
12 of the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the
13 Defendants, and each of them, were the agents, servants, and employees of each and every one of the
14 other Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
15 within the course and scope of said agency and employment. Defendants, and each of them, approved
16 of, condoned, or otherwise ratified every one of the acts or omissions complained of herein.

17 21. At all relevant times, Defendants, and each of them, were members of and engaged in a
18 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
19 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and
20 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff, the
21 other Aggrieved Employees, and the other Class Members.

22 **IV. COMMON FACTS & ALLEGATIONS**

23 22. Plaintiff and the other Class Members (collectively, the “Class Members”) are, and were
24 at all relevant times, employed by the Defendants within the State of California.

25 23. Likewise, Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved
26 Employees”) are, and were at all relevant times, employed by the Defendants within the State of
27 California.
28

1 24. The Class Members and the Aggrieved Employees are, and were, at all relevant times,
2 non-exempt employees for the purposes of overtime, and the other claims alleged in this complaint.

3 25. Specifically, Plaintiff was employed by Defendants within the statutory Class Period
4 and PAGA Period, working as an hourly, non-exempt employee for Defendants.

5 **A. WILLFUL MISCLASSIFICATION**

6 26. Labor Code section 2775, subdivision (b), provides the test for determining whether an
7 individual performing work for another is an independent contractor or an employee. It states as
8 follows:

9 “[A] person providing labor or services for remuneration shall be considered an
10 employee rather than an independent contractor unless the hiring entity
11 demonstrates that all of the following conditions are satisfied:

12 “(A) The person is free from the control and direction of the hiring entity in
13 connection with the performance of the work, both under the contract for
14 the performance of the work and in fact.

15 “(B) The person performs work that is outside the usual course of the hiring
16 entity’s business.

17 “(C) The person is customarily engaged in an independently established trade,
18 occupation, or business of the same nature as that involved in the work
19 performed.”

20 27. This standard is commonly referred to as the “ABC Test.” Under the ABC Test, the
21 alleged employer, rather than the worker, has the burden of establishing that the worker is an
22 independent contractor and not intended to be included within the relevant wage orders’ coverage. “The
23 focus is not on the label attached to a worker’s position, but on how that individual’s job may
24 reasonably be viewed.” (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1154–
25 1155.) Further, the alleged employer must establish that the worker meets **all three** factors of the ABC
26 Test or falls within an exception to the ABC Test. (*Id.* at p. 1154 [“The ABC test is conjunctive, and
27 the hiring entity’s failure to establish *any* of the following three factors precludes a finding that the
28 worker is an independent contractor”].) Otherwise, Labor Code section 2775’s default

1 presumption applies and the worker must be treated as an employee. (See *Dynamex Operations W. v.*
2 *Superior Court* (2018) 4 Cal.5th 903, 955 [“The ABC test presumptively considers all workers to be
3 employees, and permits workers to be classified as independent contractors only if the hiring business
4 demonstrates that the worker in question satisfies each of three conditions”].)

5 28. Here, at all times during the Class Period and PAGA Period, Defendants treated the
6 Class Members and the Aggrieved Employees as independent contractors despite the fact that
7 Defendants failed to meet any of the prongs of the ABC Test, let alone all three. First, Defendants
8 retained the right to control the manner and method of how the Class Members and the Aggrieved
9 Employees performed their job duties, and Defendants retained all necessary control over the Class
10 Members and the Aggrieved Employees during their employment. Among other things, the Class
11 Members and the Aggrieved Employees were required to follow detailed requirements imposed by
12 Defendants governing the performance of their job. Further, Defendants set their compensation.

13 29. Second, the job duties performed by the Class Members and the Aggrieved Employees
14 fell within Defendants’ usual course of business. Specifically, the roles performed by the Class
15 Members and the Aggrieved Employees are clearly comparable to those of Defendants’ employees
16 whose services are provided within the usual course of Defendants’ business. Thus, the work of the
17 Class Members and the Aggrieved Employees was not merely incidental to Defendants’ business, but
18 rather, was an integral and ordinary part of that business.

19 30. Finally, the Class Members and the Aggrieved Employees were not engaged in an
20 independently established trade, occupation, or business of the same nature as the work performed for
21 Defendants. The Class Members and the Aggrieved Employees did not, for example, take any of the
22 usual steps to establish and promote their businesses. Nor did the Class Members and the Aggrieved
23 Employees—through incorporation, licensure, advertisements, or routine offerings to provide services
24 to the public or to a number of potential customers—independently choose the burdens and benefits of
25 self-employment by engaging in an independently established trade, occupation, or business. Critically,
26 this last prong of the ABC Test requires that Defendants show the Class Members and the Aggrieved
27 Employees “*actually . . . engaged in an independent business, not merely that [they] could be.*”
28 (*Gonzales v. San Gabriel Transit, Inc.* (2019) 40 Cal.App.5th 1131, 1155, emphasis in original.) That

1 simply did not happen here: the Class Members and the Aggrieved Employees did not *actually engage*
2 in independent businesses. “A company that labels as independent contractors a class of workers who
3 are not engaged in an independently established business in order to enable the company to obtain the
4 economic advantages that flow from avoiding the financial obligations that a wage order imposes on
5 employers unquestionably violates the fundamental purposes of the wage order.” (*Dynamex*
6 *Operations W. v. Superior Court* (2018) 4 Cal.5th 903, 962.) Here, Defendants violated California law
7 by attempting to do so.

8 31. Labor Code section 226.8 provides, in pertinent part, as follows:

9 “(a) It is unlawful for any person or employer to engage in any of the following
10 activities:

11 “(1) Willful misclassification of an individual as an independent contractor.

12 “(2) Charging an individual who has been willfully misclassified as an
13 independent contractor a fee, or making any deductions from
14 compensation, for any purpose, including for goods, materials, space
15 rental, services, government licenses, repairs, equipment maintenance,
16 or fines arising from the individual's employment where any of the acts
17 described in this paragraph would have violated the law if the individual
18 had not been misclassified.

19 “(b) If the Labor and Workforce Development Agency or a court issues a
20 determination that a person or employer has engaged in any of the enumerated
21 violations of subdivision (a), the person or employer shall be subject to a civil
22 penalty of not less than five thousand dollars (\$5,000) and not more than fifteen
23 thousand dollars (\$15,000) for each violation, in addition to any other penalties
24 or fines permitted by law.

25 “(c) If the Labor and Workforce Development Agency or a court issues a
26 determination that a person or employer has engaged in any of the enumerated
27 violations of subdivision (a) and the person or employer has engaged in or is
28 engaging in a pattern or practice of these violations, the person or employer shall

1 be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and
2 not more than twenty-five thousand dollars (\$25,000) for each violation, in
3 addition to any other penalties or fines permitted by law.”

4 32. As explained above, Defendants’ treatment of the Class Members and the Aggrieved
5 Employees cannot meet any part of the ABC Test and Defendants knew it. Defendants thus
6 intentionally and willfully misclassified the Class Members and the Aggrieved Employees as
7 independent contractors in violation of Labor Code section 226.8, subdivision (a). Moreover, this
8 treatment was not merely occasional, but reflected Defendants’ pattern and practice of willfully
9 misclassifying Defendants’ employees as independent contractors. Defendants are thus liable, through
10 PAGA, for the civil penalties of up to \$25,000 for *each* violation as provided by Labor Code section
11 226.8, subdivisions (b) and (c). (Lab. Code, § 2699, subd. (a).)

12 **B. OVERTIME VIOLATIONS**

13 33. Labor Code section 510 requires employers to compensate employees who work more
14 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
15 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
16 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
17 employees at no less than twice the regular rate of pay when an employee works more than twelve
18 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
19 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

20 34. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the Class
21 Members and the Aggrieved Employees could not then agree and cannot now agree to work for a lesser
22 wage than the amount provided by Labor Code sections 510 or the Applicable Wage Orders.

23 35. Here, Defendants violated their duty to accurately and completely compensate the Class
24 Members and the Aggrieved Employees for all overtime worked. The Class Members and the
25 Aggrieved Employees periodically worked hours that entitled them to overtime compensation under
26 the law but were not fully compensated for those hours.

27 36. Moreover, during the relevant statutory periods, Defendants had a policy and practice
28 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when

1 Defendants paid overtime wages to the Class Members and the Aggrieved Employees, Defendants
2 failed to include all compensation when calculating the regular rate of pay used in overtime calculations
3 and when paying overtime.

4 37. For instance, the Class Members and the Aggrieved Employees would often receive,
5 along with their hourly rates of pay for their working hours, additional remuneration and/or non-
6 discretionary bonus pay. Defendants, however, calculated the regular rate of pay for the Class Members
7 and the Aggrieved Employees without factoring into the regular rate of pay all other non-hourly pay
8 earnings received during the pay period. As a result, the Class Members and the Aggrieved Employees
9 were underpaid overtime wages when they worked in excess of eight hours in any workday and/or forty
10 hours in a workweek when such additional forms of remuneration were earned. By its practice of
11 periodically requiring the Class Members and the Aggrieved Employees to work in excess of eight
12 hours in a workday and/or forty hours in a workweek without compensating them at the rate of one and
13 one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor Code
14 sections 510, 1194, and 1199.

15 38. These actions were and are in clear violation of California's overtime laws as set forth
16 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
17 §§ 11010, 11040, 11080, 11130.) As a result of Defendants' faulty policies and practices, the Class
18 Members and the Aggrieved Employees were not compensated for all hours worked or paid accurate
19 overtime compensation.

20 **C. UNTIMELY WAGES DURING EMPLOYMENT**

21 39. Labor Code section 204 expressly requires employers who pay employees on a weekly,
22 biweekly, or semimonthly basis to pay all wages "not more than seven calendar days following the
23 close of the payroll period." Labor Code section 210, subdivision (a), makes employers who violate
24 Labor Code section 204 subject to a penalty of:

25 "(1) For any initial violation, one hundred dollars (\$100) for each failure to
26 pay each employee.

27 "(2) For each subsequent violation, or any willful or intentional violation, two
28 hundred dollars (\$200) for each failure to pay each employee, plus 25

percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd. (a).)

40. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210, subd. (a).)

41. Due to Defendants’ failure to pay the Class Members and the Aggrieved Employees the wages described above Defendants failed to timely pay the Class Members and the Aggrieved Employees within seven calendar days following the close of payroll in accordance with Labor Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

V. CLASS ACTION ALLEGATIONS

42. As mentioned above, Plaintiff brings this action on behalf of himself and the Class Members pursuant to section 382 of the Code of Civil Procedure.

43. **Numerosity/Ascertainability:** The Class Members are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the class is unknown to Plaintiff at this time; however, it is estimated that the number of Class Members is greater than 100 individuals. The identity of such membership is readily ascertainable via inspection of Defendants’ employment records.

44. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated non-exempt employees, which predominate over questions affecting only individual members including, without limitation to:

A. Whether Defendants’ pay policies/practices resulted in a failure to pay the Class Members for all required overtime wages at the Class Members’ regular rate of pay;

B. Whether Defendants timely paid all wages during employment;

C. Whether Defendants’ violations of the Labor Code and the Applicable Wage Orders amounted to a violation of California’s UCL.

1 45. **Predominance of Common Questions:** Common questions of law and fact
2 predominate over questions that affect only individual Class Members. The common questions of law
3 set forth above are numerous and substantial and stem from Defendants' uniform policies and practices
4 applicable to each individual class member, such as Defendants' uniform policy and practice of failing
5 to pay for all hours worked, and others. As such, the common questions predominate over individual
6 questions concerning each individual class member's showing as to his or her eligibility for recovery
7 or as to the amount of his or her damages.

8 46. **Typicality:** The claims of Plaintiff are typical of the claims of the Class Members
9 because Plaintiff was employed by Defendants as a non-exempt employee in California during the
10 statute(s) of limitation applicable to each cause of action pleaded in this complaint. As alleged herein,
11 Plaintiff, like the other Class Members, was deprived of minimum, regular, and overtime wages
12 because of Defendants' unlawful timekeeping policies and practices, was not paid all wages in full and
13 on time, , and was subject to other similar policies and practices to which the Class Members were
14 subject.

15 47. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to
16 represent fairly and adequately the interests of the Class Members. Moreover, Plaintiff's attorneys are
17 ready, willing, and able to fully and adequately represent the Class Members and Plaintiff. Plaintiff's
18 attorneys have prosecuted numerous wage-and-hour class actions in state and federal court in the past
19 and are committed to vigorously prosecuting this action on behalf of the Class Members.

20 48. **Superiority:** The California Labor Code is broadly remedial in nature and serves an
21 important public interest in establishing minimum working conditions and standards in California.
22 These laws and labor standards protect the average working employee from exploitation by employers
23 who have the responsibility to follow the laws and who may seek to take advantage of superior
24 economic and bargaining power in setting onerous terms and conditions of employment. The nature of
25 this action and the format of laws available to Plaintiff and the Class Members make the class action
26 format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each
27 employee were required to file an individual lawsuit, Defendants would necessarily gain an
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1 unconscionable advantage since they would be able to exploit and overwhelm the limited resources of
2 each individual plaintiff with their vastly superior financial and legal resources.

3 49. Moreover, requiring each Class Member to pursue an individual remedy would also
4 discourage the assertion of lawful claims by employees who would be disinclined to file an action
5 against their former or current employer for real and justifiable fear of retaliation and permanent
6 damages to their careers at subsequent employment. Further, the prosecution of separate actions by the
7 individual Class Members, even if possible, would create a substantial risk of inconsistent or varying
8 verdicts or adjudications with respect to the individual Class Members against Defendants herein, and
9 which would establish potentially incompatible standards of conduct for Defendants or legal
10 determinations with respect to individual Class Members which would, as a practical matter, be
11 dispositive of the interest of the other Class Members not parties to adjudications or which would
12 substantially impair or impede the ability of the Class Members to protect their interests.

13 50. Further, the claims of the individual Class Members are not sufficiently large to warrant
14 vigorous individual prosecution considering the concomitant costs and expenses attending thereto. As
15 such, the Class Members identified above are maintainable as a class under section 382 of the Code of
16 Civil Procedure.

17 **VI. EXHAUSTION OF REMEDIES**

18 51. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
19 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with
20 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
21 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
22 (Lab. Code, §§ 2698–2699.6.)

23 52. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
24 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
25 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
26 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
27 action pursuant to Labor Code section 2699.
28

1 **VII. CAUSES OF ACTION**

2 **First Cause of Action**

3 *Penalties Pursuant to PAGA for Willful Misclassification in Violation of*
4 *Labor Code sections 226.8 and 2775*
5 *(Against All Defendants)*

6 53. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 54. As explained in more detail above, at all times during the Class Period and PAGA
8 Period, Defendants treated the Class Members and the Aggrieved Employees as independent
9 contractors despite the fact that Defendants failed to meet the standards required by the ABC Test to
10 classify the Class Members and the Aggrieved Employees as independent contractors. Put simply,
11 Defendants' treatment of the Class Members and the Aggrieved Employees cannot meet any part of
12 the ABC Test and Defendants knew it. Plaintiff and the Aggrieved Employees are thus "aggrieved
13 employees" within the meaning of PAGA, as they were employed by Defendants during the PAGA
14 Period and suffered the Labor Code violations alleged herein.

15 55. At all relevant times, Plaintiff and the other Aggrieved Employees were "employees"
16 for purposes of the California Labor Code, as defined in section 2775, although they were knowingly,
17 willfully, and intentionally misclassified by Defendants' as independent contractors as part of
18 Defendants' unlawful scheme to obtain the economic advantages that flow from avoiding the financial
19 obligations that the Labor Code and Applicable Wage Orders imposes on employers. This was part of
20 a pattern as practice of willful misclassification of all, or virtually all, of Defendants' employees who
21 meet the definition of "Aggrieved Employees" provided above, thereby triggering heightened penalties
22 under Labor Code section 226.8, subdivisions (b) and (c).

23 56. Plaintiff by this action seeks to recover, on behalf of himself and all other Aggrieved
24 Employees, the civil penalties provided by Labor Code section 226.8 and by PAGA, as specified in
25 Labor Code section 2699, subdivision (f). Plaintiff seeks to recover the civil penalties through a
26 representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior*
27 *Court* (2009) 46 Cal.4th 969, 986.
28

57. In addition to the penalties sought as described above, Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of the Aggrieved Employees, and to assess and collect the penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision (g)(1).

Second Cause of Action

Failure to Pay All Overtime Wages

(Against All Defendants)

58. Plaintiff realleges and incorporates by reference all previous paragraphs.

59. This cause of action is brought pursuant to Labor Code sections 204, 510, 1194, and 1198, which provide that non-exempt employees are entitled to overtime wages for all overtime hours worked and provide a private right of action for the failure to pay all overtime compensation for overtime work performed. At all times relevant herein, Defendants were required to properly pay Plaintiff and the other Class Members for all overtime wages earned pursuant to Labor Code section 1194 and the Applicable Wage Orders. Defendants caused Plaintiff and the other Class Members to work overtime hours but did not compensate them at one and one-half times their regular rate of pay for such hours in accordance with California law. Likewise, Defendants caused Plaintiff and the other Class Members to work double-time hours but did not compensate them at twice their regular rate of pay for such hours in accordance with California law.

60. Defendants failed to fully conform their pay practices to the requirements of California law. This unlawful conduct includes but is not limited to Defendants' uniform and unlawful pay policies and practices of failing to accurately record all the time that non-exempt employees were under the supervision and control of Defendants. The foregoing policies and practices are unlawful and allow Plaintiff and the other Class Members to recover in a civil action the unpaid amount of overtime premiums owing, including interest thereon, statutory penalties, attorney's fees, and costs of suit according to Labor Code section 204, 510, 1194, and 1198, the Applicable Wage Orders, and Code of Civil Procedure section 1021.5.

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1 compensation owed to them in a civil action and any applicable penalties, attorney fees, and interest
2 owed to them pursuant to Labor Code sections 210 and 218.5.

3 **Fourth Cause of Action**

4 *Violations of California's Unfair Competition Law*

5 *(Against All Defendants)*

6 67. Plaintiff realleges and incorporates by reference all previous paragraphs.

7 68. Defendants have engaged and continue to engage in unfair and/or unlawful business
8 practices in California in violation of California Business and Professions Code section 17200 through
9 17210, by committing the unlawful acts described above. Defendants' utilization of these unfair and
10 unlawful business practices deprived and continue to deprive Plaintiff and the other Class Members of
11 compensation to which they are legally entitled. These practices constitute unfair and unlawful
12 competition and provide an unfair advantage over Defendants' competitors who have been and/or are
13 currently employing workers and attempting to do so in honest compliance with applicable wage and
14 hour laws.

15 69. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct alleged herein,
16 Plaintiff for himself and on behalf of the Class Members, seeks full restitution of monies, as necessary
17 and according to proof, to restore any and all monies withheld, acquired and/or converted by
18 Defendants pursuant to Business and Professions Code sections 17203 and 17208.

19 70. The acts complained of herein occurred within the four years prior to the initiation of
20 this action and are continuing into the present and ongoing.

21 71. Plaintiff was compelled to retain the services of counsel to file this Court action to
22 protect his interests and those of the Class Members, to obtain restitution and injunctive relief on behalf
23 of Defendants' current non-exempt employees and to enforce important rights affecting the public
24 interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs, which Plaintiff
25 is entitled to recover under Code of Civil Procedure section 1021.5.

Fifth Cause of Action

*Penalties Pursuant to PAGA for Violations of California Labor Code Sections 204,
210, 510, 1185, 1198, 1199, and Other Provisions of the Labor Code
(Against All Defendants)*

72. Plaintiff realleges and incorporates by reference all previous paragraphs.

73. Based on the above allegations incorporated by reference, Defendants violated Labor Code sections 204, 210, 226.8, 510, 1185, 1198, 1199, 2775, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130), and others that may be applicable.

74. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 204, 210, 226.8, 510, 1185, 1198, 1199, 2775, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11010, 11040, 11080, 11130), and others that may be applicable.

75. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation, Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

A. \$100 for the initial violation per employee per pay period; and

B. \$200 for each subsequent violation per employee per pay period.

76. These penalties must be allocated seventy-five percent to the Labor and Workforce Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9, for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that "PAGA

1 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
2 different Labor Code violations.”], internal quotation marks omitted).

3 77. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
4 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
5 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
6 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
7 780, 788.)

8 78. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
9 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
10 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
11 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
12 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
13 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
14 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
15 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
16 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
17 subdivision (e).

18 79. Labor Code section 210 provides that “in addition to, an entirely independent and apart
19 from, any other penalty provided in this article, every person who fails to pay the wages of each
20 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
21 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
22 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
23 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
24 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
25 penalties under Labor Code section 210 through PAGA.

26 80. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
27 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
28 intentionally committed for each underpaid employee for each pay period for which the employee is

1 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
2 offense for each underpaid employee for each pay period for which the employee is underpaid
3 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
4 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
5 to Labor Code section 1197.1.

6 81. Plaintiff was compelled to retain the services of counsel to file this action to protect his
7 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
8 by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled
9 to recover under Labor Code section 2699, subdivision (g)(1).

10 **VIII. DEMAND FOR JURY TRIAL**

11 82. Plaintiff hereby demands trial by jury of Plaintiff's and the Class Members' claims
12 against Defendants.

13 **IX. PRAYER FOR RELIEF**

14 Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought
15 against Defendants, as follows:

- 16 1. For an order certifying the proposed class;
- 17 2. For an order appointing Plaintiff as representative of the class;
- 18 3. For an order appointing Plaintiff's counsel as counsel for the class;
- 19 4. For willful misclassification, penalties as provided by Labor Code section 226.8,
20 subdivisions (b) and (c), any other penalties applicable under Labor Code section 2699,
21 and attorneys' fees and costs pursuant to Labor Code section 2699, subdivision (g)(1);
- 22 5. For the failure to pay all overtime wages, compensatory, consequential, general, and
23 special damages according to proof pursuant to Labor Code sections 204, 510, 1194,
24 1198, and others as may be applicable;
- 25 6. For the failure to pay wages timely during employment, the unpaid balance of the
26 compensation owed to Plaintiff and the other Class Members and any applicable
27 penalties owed to them pursuant to Labor Code section 210;
- 28

- 1 7. For the violations of California’s Unfair Competition Law, restitution to Plaintiff and
2 the other Class Members of all money and/or property unlawfully acquired by
3 Defendants by means of any acts or practices declared by this Court to be in violation
4 of Business and Professions Code sections 17200 through 17210;
- 5 8. For the claim of penalties pursuant to PAGA and other provisions of the California
6 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
7 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
8 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
9 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
10 available under Labor Code section 210;
- 11 9. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
12 and Civil Code sections 3287 and 3289;
- 13 10. On all causes of action for which attorneys’ fees may be available, for attorneys’ fees
14 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
15 section 1021.5, and others as may be applicable;
- 16 11. For an order enjoining Defendants, and each of them, and their agents, servants, and
17 employees, and all persons acting under, in concert with, or for them, from acting in
18 derogation of any rights or duties adumbrated in this complaint; and
- 19 12. For such other and further relief, this Court may deem just and proper.

20
21 Dated: December 14, 2023

MELMED LAW GROUP P.C.



HANNAH BECKER

Attorney for Plaintiff, the Putative Class, and the
Aggrieved Employees