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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Stephani Crow, Deputy

Attorneys for Plaintiff BRETT KELLY,
on behalf of himself and all others similarly
situated and on behalf of the general public

\$435 PD
\$1,000 COMPLEX PD
\$150 JURY FEE PD

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF STANISLAUS

BRETT KELLY, on behalf of himself and
all others similarly situated, and on behalf
of the general public,

Plaintiff,

v.

CONRAD WOOD PRESERVING CO. dba
CONRAD FOREST PRODUCTS; and
DOES 1-100,

Defendants.

Case No. CV-23-004867

**PLAINTIFF BRETT KELLY'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties (Cal. Lab. Code § 2698, et. seq.)
9. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff BRETT KELLY (hereinafter “Plaintiff”), on behalf himself and all other similarly aggrieved
2 employees (hereinafter “aggrieved employees”), files this Complaint against Defendant CONRAD
3 WOOD PRESERVING CO. dba CONRAD FOREST PRODUCTS (hereinafter “Defendant”) and/or
4 DOES 1-100.

5
6 **I. INTRODUCTION**

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

12 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
13 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
14 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
15 break; worked qualifying shifts without receiving second meal periods and second and third
16 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
17 owed twice per month; were not paid compensation for all time worked at the straight,
18 overtime, or double time rate; were not paid waiting time penalties; were not reimbursed for
19 business expenses; and were subject to an unlawful sick leave policy. Plaintiff seeks penalties
20 on behalf of himself and all other aggrieved employees of Defendant and/or DOES as provided
21 herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal. Lab. Code
22 § 2699(g)(1).

23 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
24 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
25 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
26 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
27 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
28 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
paid compensation for all time worked at the regular, overtime or double time rate; paid all

wages owed twice per month; paid penalties for not being paid timely at the time of termination; reimbursed for business expenses; and permitted to take lawful paid sick leave.

4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, overtime, double time, rest periods, wage statements, paying compensation at time of termination, timing of payment, paid sick leave, and business expense reimbursement. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the other aggrieved employees from working.

II. JURISDICTION AND VENUE

5. Plaintiff BRETT KELLY is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits *California Labor Code* violations within Stanislaus County and California. Each Defendant and/or DOE is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees situated within the State of California and within Stanislaus County. Defendant and/or DOES employ numerous aggrieved employees in California and/or Stanislaus County.
7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of

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

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

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of Stanislaus, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff BRETT KELLY, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, compensation for all time worked at the regular, overtime, and doubletime rate, to be paid timely pursuant to California law, permitted to take lawful paid sick leave, to receive timely wages at the time of termination, and to be reimbursed for business expenses.

11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as non-exempt hourly employees during the relevant time period. Plaintiff was employed in a non-exempt capacity.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on June 21, 2023. This notice demonstrates that Plaintiff is an aggrieved

employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

B. Defendants

13. Defendant and/or DOES operate throughout the State of California and employ non-exempt, hourly employees to operate facilities which produce lumber and wood products to serve Defendant’s and/or DOES’ customers.

14. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

15. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

16. California is the nerve center of Defendant’s and/or DOES’ operations.

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

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

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

IV. GENERAL ALLEGATIONS

20. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant and/or DOES in the State of California. Plaintiff and the other aggrieved employees are composed of all non-exempt hourly employees of Defendant and/or DOES in the State of California.
21. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be paid for all hours worked at the minimum, regular, overtime, and/or doubletime rate of pay.
22. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely, uninterrupted meal period.
23. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by failing to provide compensation for these unprovided meal periods, Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 1-2001, and California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed to provide Plaintiff and the other aggrieved employees another duty-free meal period of not less than thirty (30) minutes for every shift of more than ten (10) hours per day.
24. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.
25. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide

1 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
2 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 1-2001, and California Code of Regulations,
3 Section 11070(12).

4 26. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff
5 and to other terminated or resigned members of the aggrieved employees and failed to timely
6 pay wages during employment.

7 27. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved
8 employees all wages earned twice per month.

9 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
10 Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay
11 statements in accordance with California law.

12 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
13 they were not providing complete and accurate pay statements in accordance with California
14 law to Plaintiff and the aggrieved employees.

15 30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
16 they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with
17 California law, and that Defendant and DOES had the ability to pay such compensation, but
18 willfully and intentionally failed to do so, and Defendant and DOES falsely represented to
19 Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and
20 the other aggrieved employees.

21 31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
22 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
23 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
24 owed, meal period premiums, and/or rest period premiums owed at the time of termination.

25 32. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
26 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
27 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

28 33. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that

1 Plaintiff and the aggrieved employees were entitled to receive be reimbursed for business
2 expenses in accordance with California law.

3 34. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
4 it should have adopted a paid sick leave policy for Plaintiff and the aggrieved employees
5 complaint with California law.

6 35. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
7 all non-exempt hourly employees of Defendant and/or DOES in California, employed
8 beginning one year prior to the date Plaintiff sent Notice to the LWDA.

9 36. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
10 respect to the issues or in any other way.

11 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
12 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
13 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

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

16 38. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
17 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
18 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
19 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
20 from wages when the employer is required or empowered to do so by state or federal law or
21 when the deduction is expressly authorized in writing by the employee for specified purposes
22 that do not in effect reduce the agreed upon wage.

23 39. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting
24 individually as an officer, agent, or employee of another person, who pays or causes to be paid
25 to any employee a wage less than the minimum fixed by an applicable state or local law, or by
26 an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated
27 damages payable to the employee, and any applicable penalties pursuant to Section 203.”

28 40. Defendant and/or DOES have a continuous policy of not paying Plaintiff and similarly

aggrieved employees for all hours worked in that Defendant and/or DOES have not paid for all the time Plaintiff and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before “shifts” start, after “shifts” end, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties.

41. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked in that Defendant and/or DOES continuously and consistently clocked Plaintiff and the aggrieved employees out for a thirty (30) minute meal period and/or otherwise recorded a meal period, even though Plaintiff and the aggrieved employees work through some or all of their meal periods, and/or were unable to take meal periods. Plaintiff and aggrieved employees are not paid for 30-minutes each day, despite the fact that, per Defendant’s and/or DOES’ meal period policies, Plaintiff and aggrieved employees are not completely free to use all the time for their own purposes and pursuits.

42. Likewise, Plaintiff and the aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by deducting a portion of the wages earned by Plaintiff and the aggrieved employees when they worked through their meal periods and/or when Defendant and/or DOES recorded a 30-minute meal period for Plaintiff and the aggrieved employees when no meal period of such length was taken. Specifically, Plaintiff and the aggrieved employees worked through and had to field calls and messages from their supervisors during their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law.

43. Plaintiff and the aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and similarly aggrieved employees by failing to pay them for meal period time when Plaintiff and the aggrieved employees were not relieved of all duties and employer control

44. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant

1 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved
2 employees' rights.

3 45. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
4 wages, and lost interest on such wages, and expenses.

5 46. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
6 worked for Defendant and/or DOES in California.

7 47. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant and/or
8 DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under
9 the PAGA. Plaintiff satisfied all prerequisites to serve as representatives of the general public
10 to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* §
11 2699.5.

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

17 49. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
18 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
19 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*
20 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
21 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

22 50. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
23 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this
24 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
25 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
26 pursuant to *Cal. Lab. Code* § 558(a).

27
28

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

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

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

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

54. Defendant and/or DOES failed to pay overtime when Plaintiff and the aggrieved employees worked over eight (8) hours per day and when employees worked over 40 hours per week. Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and 40 hours in a week.

55. Defendant and/or DOES have a continuous policy of not paying Plaintiff and similarly aggrieved employees for all hours worked in that Defendant and/or DOES has not paid for all the time Plaintiff and similarly aggrieved employees worked throughout the day, including, but not limited to rounding, before "shifts" start, after "shifts" end, and/or any other time in the day when the employees were performing work tasks, subject to the control of Defendant and/or DOES and/or otherwise had work duties. Thus, when Plaintiff's and the aggrieved employees' hours worked exceeded straight time thresholds, this uncompensated time should have, but was not, paid at the applicable overtime rate.

56. Additionally, Defendant and/or DOES have had a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked in that Defendant and/or DOES continuously

1 and consistently clocked Plaintiff and the aggrieved employees out for a thirty (30) minute
2 meal period and/or otherwise recorded a meal period, even though Plaintiff and the aggrieved
3 employees work through some or all of their meal periods, and/or were unable to take meal
4 periods. Plaintiff and aggrieved employees are not paid for 30-minutes each day, despite the
5 fact that, per Defendant's and/or DOES' meal period policies, Plaintiff and aggrieved
6 employees are not completely free to use all the time for their own purposes and pursuits. Thus,
7 when Plaintiff's and the aggrieved employees' hours worked exceeded straight time
8 thresholds, this uncompensated time should have, but was not, paid at the applicable overtime
9 rate.

10 57. Likewise, Plaintiff and the aggrieved employees are informed and believe and thereon allege
11 that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by deducting
12 a portion of the wages earned by Plaintiff and the aggrieved employees when they worked
13 through their meal periods and/or when Defendant and/or DOES recorded a 30-minute meal
14 period for Plaintiff and the aggrieved employees when no meal period of such length was
15 taken. Specifically, Plaintiff and the aggrieved employees worked through and had to field
16 calls and messages from their supervisors during their meal periods to satisfy their demanding
17 work duties imposed by Defendant and/or DOES, thereby denying them the right to be
18 completely free from employer control under California law. Thus, when Plaintiff's and the
19 aggrieved employees' hours worked exceeded straight time thresholds, this uncompensated
20 time should have, but was not, paid at the applicable overtime rate.

21 58. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
22 wages, and lost interest on such wages, and expenses.

23 59. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
24 worked for Defendant and/or DOES in California.

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

28 61. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself

and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

62. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

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

64. Under Cal. Lab. Code § 512, and IWC Wage Order 1-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

65. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

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

1 not provided.

2 67. Defendant and/or DOES breached the legal duty to provide meal periods to employees by
3 imposing a continuous and consistent policy requiring Plaintiff and the aggrieved employees
4 to work through and field calls and messages from their supervisors during their meal periods
5 to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby
6 denying Plaintiff and the aggrieved employees of the right to be completely free from employer
7 control under California law.

8 68. Further, Defendant and/or DOES have a continuous and consistent policy of clocking Plaintiff
9 and the aggrieved employees out for a thirty (30) minute meal period and/or otherwise recorded
10 a meal period, even though, pursuant to Defendant's and/or DOES' policies, Plaintiff and the
11 aggrieved employees work through some or all of their meal periods, and/or were unable to
12 take meal periods.

13 69. Additionally, Defendant and/or DOES institutes a consistent policy/practice of failing to
14 provide Plaintiff and the aggrieved employees with a first meal period before the fifth hour of
15 work, as well as failing to provide second meal periods to Plaintiff and all aggrieved
16 employees, and/or providing compensation in lieu thereof.

17 70. By failing to provide statutory first and/or second meal periods, and by failing to provide
18 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
19 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

20 71. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
21 worked for Defendant and/or DOES in California.

22 72. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
23 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
24 has satisfied all prerequisites to serve as a representative of the general public to enforce
25 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

26 73. Plaintiff, as a representative of the people of the State of California, will seek all penalties
27 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
28 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section

- 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.
74. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
75. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

76. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.
77. Industrial Welfare Commission Order No. 4-2001 section 12(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”
78. Defendant and/or DOES have had a consistent policy and/or practice of not providing duty free ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Plaintiff and the aggrieved employees.
79. Defendant and/or DOES breached the legal duty to provide rest periods to employees by imposing a continuous and consistent policy requiring Plaintiff and the aggrieved employees to work through and field calls and messages from their supervisors during their rest periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby

denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

80. Additionally, Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff and the aggrieved employees with rest periods “at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or DOES do not provide Plaintiff and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours worked or major fraction thereof. Defendant and/or DOES incentivize aggrieved employees to forego rest periods, by valuing production over employee entitlements to rest breaks. Even if rest breaks were provided, they were not provided whereby employees were free of Defendant’s and/or DOES’ control.

81. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7.

82. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who worked for Defendant and/or DOES in California.

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

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

85. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred

dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

86. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

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

88. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

89. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

90. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

91. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their

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

chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 et. seq.).

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

100. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees, either as an detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee...(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than the social security number, (8) the name and address of the legal entity that is the employer...(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate and the corresponding number of hours worked at each hourly rate by the employee....”

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

1 the State of California.”

2 102. *California Labor Code* section 246(i) also requires that, “[a]n employer shall provide an
3 employee with written notice that sets forth the amount of paid sick leave available, or paid
4 time off leave an employer provides in lieu of sick leave, for use on either the employee’s
5 itemized wage statement described in Section 226 or in a separate writing provided on the
6 designated pay date with the employee’s payment of wages.”

7 103. Defendant and/or DOES have knowingly and intentionally failed to comply with *Labor Code*
8 section 226(a) on each and every wage statement provided to Plaintiff and the other aggrieved
9 employees.

10 104. Throughout the statutory period, Defendant and/or DOES knowingly and intentionally did not
11 include the gross and net wages earned on wage statements provided to Plaintiff and the other
12 aggrieved employees. Defendant and/or DOES therefore knowingly and intentionally failed to
13 itemize the gross wages earned on Plaintiff’s and the aggrieved employees’ wage statements.

14 105. In every pay period during the period of the relevant statute of limitations, Defendant and/or
15 DOES knowingly and intentionally did not itemize the total hours worked on wage statements
16 as *Labor Code* section 226, subsection (a), requires. In every pay period during the period of
17 the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did
18 not include the total hours worked and the respective rate of compensation on wage statements.
19 Defendant and/or DOES therefore knowingly and intentionally failed to itemize the total hours
20 worked and the correct hourly rate on Plaintiff’s and the aggrieved employees’ wage
21 statements.

22 106. In every pay period during the period of the relevant statute of limitations, Defendant and/or
23 DOES have also failed to correctly provide the name of the legal entity that employs Plaintiff
24 and the aggrieved employees on each and every wage statement provided to Plaintiff and the
25 aggrieved employees.

26 107. Throughout the statutory period, because of the knowing and intentional failure by Defendant
27 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
28 aggrieved employees have been able to reconstruct only a reasonable estimate of the hours

1 worked and have, therefore, not received full compensation.

2 108. In addition, Defendant and/or DOES do not provide Plaintiff and the aggrieved employees
3 with written notice that sets forth the amount of sick leave available for use, either in
4 employees' itemized wage statements or in a separate writing provided to employees on the
5 designated pay date.

6 109. Further, in addition to any penalties levied upon Defendant and/or DOES for its failure to
7 comply with *Labor Code* section 226 subdivision (a)'s requirement to provide Plaintiff and the
8 aggrieved employees accurate, itemized wage statements, *Labor Code* section 226.3 assesses
9 additional penalties for the failure to keep the records required in subdivision (a) of Section
10 226. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES to maintain
11 records that "accurately shows all of the information required by this subdivision." Defendant
12 and/or DOES have violated its statutory duty to maintain records for Plaintiff and the aggrieved
13 employees that contain all of the information under *Labor Code* section 226(a)(1) through (9)

14 110. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
15 worked for Defendant and/or DOES in California.

16 111. Plaintiff, as a non-exempt employee who Defendants and/or DOES failed to provide accurate
17 and itemized wage statements, is an aggrieved employee with standing to bring an action under
18 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
19 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
20 2699.5.

21 112. Plaintiff, as a representative of the people of the State of California, will seek all penalties
22 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
23 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
24 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174,
25 1199.

26 113. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
27 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
28 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.

Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

114. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month (Cal. Lab. Code § 2698 et. seq.).

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

116. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

117. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the following month.”

118. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 204(a).

119. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

1 120. Alternatively, Defendant and/or DOES failed to pay wages to Plaintiff and the aggrieved
2 employees earned within seven (7) calendar days of the end of the payroll period in which the
3 wages were earned.

4 121. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that
5 were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code §
6 204.

7 122. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
8 worked for Defendant and/or DOES in California.

9 123. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
10 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
11 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
12 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
13 2699.5 for violations of Cal. Lab. Code § 204.

14 124. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
15 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
16 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
17 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
18 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

19 125. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
20 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
21 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
22 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
23 pursuant to Cal. Lab. Code § 558(a).

24 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
25 **Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business**
26 **Expenses (California Labor Code §2698 et. seq.)**

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

1 127. California Labor Code section 2802 provides: “An employer shall indemnify his or her
2 employees for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions
4 of the employer...[which includes] all reasonable costs, including, but not limited to, attorneys’
5 fees incurred by the employee enforcing the rights granted by this section.”

6 128. Plaintiff and the aggrieved employees incurred expenses in the discharge of their duties without
7 receiving reimbursement from Defendant and/or DOES include, but are not limited to, cellular
8 phone costs for having to use their personal cell phones to communicate with their supervisors
9 and Defendant’s and/or DOES’ customers throughout the workday. *Labor Code* section
10 2802(a) entitles Plaintiff and the aggrieved employees to reimbursement for said necessary
11 expenditures, plus interest and expenses.

12 129. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
13 worked for Defendant and/or DOES in California.

14 130. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or
15 DOES failed to reimburse, is an aggrieved employee with standing to bring an action under
16 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
17 public to enforce California’s labor laws, and the penalty provisions identified in *Labor Code*
18 section 2699.5 for violations of *Labor Code* section 2802.

19 131. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
20 herself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
21 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
22 per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
23 employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

24 **NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
25 **Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid**
26 **Time Off Policy**

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

- 1 133. Section 246(a)(1) of the California Labor Code states: “An employee who, on or after July 1,
2 2015, works in California for the same employer for 30 or more days within a year from the
3 commencement of employment is entitled to paid sick days as specified in this section.”
- 4 134. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid
5 sick days beginning on the 90th day of employment, after which day the employee may use
6 paid sick days as they are accrued.”
- 7 135. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee
8 the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any
9 manner discriminate against an employee for using, or attempting to exercise the right to use,
10 sick leave to attend to an illness or the preventive care of a family member, or for any other
11 reason specified in subdivision (a) of Section 246.5.”
- 12 136. Section 233(d) of the California Labor Code provides relief for violations of this section,
13 stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to
14 reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate
15 equitable relief.”
- 16 137. Section 234 of the California Labor Code further forbids employers from adopting an “absence
17 control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead
18 to or result in discipline, discharge, demotion, or suspension is a per se violation of Section
19 233. An employee working under this policy is entitled to appropriate legal and equitable relief
20 pursuant to Section 233.”
- 21 138. Defendant and/or DOES operate under an absence control policy that counts sick leave taken
22 pursuant to Section 233 as an absence that may lead to or result in discipline, discharge,
23 demotion, or suspension. Thus, Defendant’s and/or DOES’ sick pay policy punishes
24 employees for use of protected and appropriate sick leave. Defendant and/or DOES further
25 failed to provide paid sick days for all hours worked in compliance with these sections.
- 26 139. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
27 worked for Defendant and/or DOES in California.
- 28 140. Plaintiff, as a non-exempt employee subject to Defendant and/or DOES’ unlawful sick pay

policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code §§ 233, 234, and 246.

141. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

142. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

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

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;

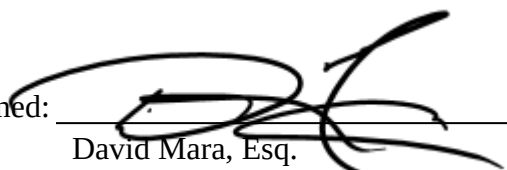
- 1 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
2 for failure to timely pay wages at separation;
- 3 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
4 for failure to provide compensation at the regular, overtime, and double time rate for all time
5 worked;
- 6 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
7 for failure to provide compensation at the minimum wage;
- 8 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
9 for failure to provide accurate, itemized wage statements;
- 10 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
11 for failure to pay employees all wages owed twice per month;
- 12 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
13 for failure to adopt a sick pay policy compliant with California law;
- 14 L. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, *et. seq.*
15 for failure to reimburse business expenses; and
- 16 M. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

17 **DEMAND FOR JURY TRIAL**

18 Plaintiff demands a jury trial.

19 **MARA LAW FIRM, PC**

20
21 Date: August 28, 2023

Signed: 

David Mara, Esq.

Matthew Crawford, Esq.

Attorneys for Plaintiff BRETT KELLY, on
behalf of himself and all others similarly
situated, and on behalf of the general public