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Attorneys for Plaintiff BARIS E. HARVEY, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of himself and Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN MATEO

23-CIV-05097

BARIS E. HARVEY, on behalf of himself and
all other Aggrieved Employees,

Plaintiff,

v.

AI INDUSTRIES, LLC, a California Limited
Liability Company; AI LLC, a Delaware
Limited Liability Company doing business in
California; and DOES 1- 50, Inclusive,

Defendants,

Case No.

COMPLAINT

1. Civil Penalties under the Private Attorneys General Act (PAGA)

1 Plaintiff, BARIS E. HARVEY, (“Plaintiff”), as a representative of the State of California
2 and the Labor and Workforce Development Agency (LWDA), and on behalf of himself and other
3 current or former Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

5 1. This is a representative action brought by Plaintiff, as a representative of the State
6 of California and the LWDA, and on behalf of Plaintiff and other Aggrieved Employees, to
7 collect civil penalties for Defendants’ Labor Code violations.

8 2. Defendants and employers, AI INDUSTRIES, LLC, a California Limited
9 Liability Company; AI LLC, a Delaware Limited Liability Company doing business in
10 California; and DOES 1- 50, Inclusive, (collectively “Defendants”), violated numerous wage
11 and hour laws with respect to Plaintiff and Aggrieved Employees by failing to provide, for
12 example: accurate and itemized wages statements, payment for all hours worked (including
13 regular wages and overtime), failure to provide a minimum wage lawful meal periods, lawful
14 rest periods, timely payment during employment, failure to reimburse for expenses incurred
15 during the course and scope of employment, and payment upon separation of employment.

16 **PARTIES**

17 **The Plaintiff**

18 3. Plaintiff is, and at all times herein mentioned was, a resident of California,
19 currently residing in San Mateo County. Aggrieved Employees are former and/or current non-
20 exempt employees holding various positions employed by Defendants in California during the
21 relevant time period who were subject to at least one or more violations set forth in the PAGA
22 Notice dated July 19, 2023, and attached hereto as **Exhibit A** (“Aggrieved Employees”).

23 **The Defendants**

24 4. Defendant AI INDUSTRIES, LLC is a California corporation which, at all
25 relevant times mentioned herein, existing, doing business and employing individuals in the
26 County of San Mateo, State of California. Plaintiff is informed and thereon alleges that Defendant
27 exercised control over Plaintiff and Aggrieved Employees’ wages, hours, and working conditions.
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1 5. Defendant AI LLC is a Delaware Corporation doing business and registered to do
2 business in California, and at all relevant times mentioned herein, existing, doing business and
3 employing individuals in the County of San Mateo, State of California. Plaintiff is informed and
4 thereon alleges that Defendant exercised control over Plaintiff and Aggrieved Employees' wages,
5 hours, and working conditions.

6 6. The true names and capacities, whether individual, corporate, associate, or
7 otherwise of Defendants named herein as DOES 1-50, inclusive, are unknown to Plaintiff at this
8 time and therefore said Defendants are sued by such fictitious names. Plaintiff will seek leave to
9 amend this Complaint to insert the true names and capacities of said Defendants when the same
10 become known to Plaintiff. Plaintiff is informed and believes and thereupon alleges that each of
11 the fictitiously-named Defendants are responsible for the wrongful acts alleged herein and is
12 therefore liable to Plaintiff as alleged hereinafter.

13 7. Plaintiff is informed and believes, and based thereupon alleges, that at all times
14 relevant hereto, Defendants, and each of them, were the agents, employees, managing agents,
15 supervisors, conspirators, parent corporation, joint employers, alter ego, and/or joint ventures of
16 the other Defendants, and each of them, and in doing the things alleged herein, were acting at
17 least in part within the course and scope of said agency, employment, conspiracy, joint
18 employment, alter ego status, and/or joint venture and with the permission and consent of each of
19 the other Defendants.

20 8. Plaintiff is informed and believes, and based thereupon alleges, that Defendants,
21 and each of them, including those Defendants named DOES 1-50, acted in concert with one
22 another to commit the wrongful acts alleged therein, and aided, abetted, incited, compelled,
23 and/or coerced one another in the wrongful acts alleged herein, and/or attempted to do so.
24 Plaintiff is further informed and believes, and based thereupon alleges, that the Defendants, and
25 each of them, including those Defendants named as DOES 1-50, formed and executed a
26 conspiracy or common plan pursuant to which they would commit the unlawful acts alleged
27 herein, with all such acts alleged herein done as part of and pursuant to said conspiracy, intended
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1 to and actually causing Plaintiff harm.

2 9. Whenever and wherever reference is made in this Complaint to any act or failure
3 to act by a defendant or co-defendant, such allegations and references shall also be deemed to
4 mean the acts and/or failures to act by each defendant acting individually, jointly and severally.

5 **JURISDICTION AND VENUE**

6 10. Venue is proper in San Mateo County, because Defendants maintain its locations
7 and transacts business in this county, the obligations and liability primarily arise in this county,
8 and work was primarily performed by Plaintiff and other Aggrieved Employees in this county.

9 11. The California Superior Court has jurisdiction over this matter. The individual
10 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for
11 federal court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional
12 amount required for diversity removal. Further, there is no federal question at issue as the issues
13 herein are based solely on California statutes and law, including, but not limited to, the California
14 Labor Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure,
15 and California Rules of Court.

16 **GENERAL ALLEGATIONS**

17 12. Defendant, a factory that fabricates metal production, employed Plaintiff and
18 Aggrieved Employees in California during the relevant PAGA period. Aggrieved Employees are
19 all former and current non-exempt employees employed by Defendants within California
20 holding various positions who experienced at least one or more of the violations set forth in the
21 PAGA Notice attached hereto as **Exhibit A**. Plaintiff began working on or about March 2022 to
22 about June 21, 2023, as a "Maintenance Worker".

23 13. The position required Plaintiff to work more than 8 hours a day and/or 40 hours
24 per week without lawful compensation. Plaintiff and non-exempt Aggrieved Employees were
25 regularly not paid for minimum wages and overtime for compensable work time spent under the
26 control of Defendant, but which was performed off-the-clock, even though such additional work
27 time was in excess of regularly scheduled, eight-hour daily shifts.
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1 14. Plaintiff and Aggrieved Employees suffered from Defendants illegal time
2 rounding policies that deprived them of all compensable work time and appropriate premium
3 compensation. Furthermore, Plaintiff and Aggrieved Employees regular rate of pay did not
4 include "Bonus" and "Retroactive" pay that resulted in less than the required premium pay.
5 Plaintiff and Aggrieved Employees were subject to not having all their compensable work time
6 recorded due to Defendant's high-volume needs and understaffing. Not all of Plaintiff and
7 nonexempt Aggrieved Employees' compensable work time spent under the control of Defendant
8 was accounted for and compensated. Specifically, Defendant (1) adjusted clock in and clock out
9 times to the disadvantage of Plaintiff and other non-exempt Aggrieved Employees by rounding
10 up clock-in times when Plaintiff and Aggrieved Employees clocked in before the scheduled start
11 of their respective shifts and rounded down clock-out times when Plaintiff and Aggrieved
12 Employees worked past the scheduled end time for their shifts, as well as (2) requiring Plaintiff
13 and non-exempt employees to continue working when ostensibly on duty-free meal periods, or
14 requiring them to return to work before the end of their thirty-minute meal periods but prohibiting
15 them from clocking back in until the legally required thirty-minute mark.
16

17 15. Based on information and belief, Plaintiff believes Aggrieved Employees were
18 also not being reimbursed for all necessary expenses incurred in the performance of their job
19 duties. Specifically, Defendant required Plaintiff and Aggrieved Employees, regardless of
20 classification, to use their personal cellular telephones to communicate with colleagues and
21 supervisors in the course of performing their respective duties but failed to reimburse them for
22 use of the personal cellular devices nor the consumption of personal calling or home internet
23 data plans. Plaintiff and Aggrieved Employees, also had to drive their own personal vehicle
24 from both factory locations and were not reimbursed for mileage.
25

26 16. Defendants failed to authorize and permit all required meal and rest periods for
27 Plaintiff and Aggrieved Employees because, upon information and belief, Defendants
28 maintained unlawful meal/rest period policies and practices. In order to curtail labor costs,
Defendants regularly did not staff enough employees to provide sufficient coverage to maintain

1 their business operations so Plaintiff and Aggrieved Employees could not both complete their
2 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
3 Defendants prioritized completion of daily duties and customer satisfaction ahead of meal and
4 rest period compliance. Defendants failed to provide Plaintiff and Aggrieved Employees with an
5 additional hour of premium pay at the regular rate of pay for each meal/rest period violation, as
6 required by Labor Code section 226.7.

7 17. As a result of the violations described above, Plaintiff and Aggrieved Employees
8 experienced collateral or derivative violations. Specifically, Defendants failed to provide
9 Plaintiff and Aggrieved Employees accurate itemized wage statements in writing in compliance
10 with Labor Code section 226 and failed to compensate Plaintiff and Aggrieved Employees for
11 all wages owed at the time employment with Defendant had ended.

12 18. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
13 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
14 departments, divisions, commissions, boards, agencies or employees for violation of the code
15 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
16 behalf of himself or herself and other current or former employees pursuant to the procedures
17 specified in Labor Code section 2699.3.

18 19. For all provisions of the Labor Code except those for which a civil penalty is
19 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
20 penalty of one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for the
21 initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period
22 for each subsequent pay period in which Defendant violated these provisions of the Labor Code.

23 20. Defendants' conduct during the PAGA period with respect to Plaintiff and the
24 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

25 21. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage
26 and hour violations under the California Labor Code and IWC Wage Orders.

27 22. At all relevant times herein, Defendants employed Plaintiff and other Aggrieved
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1 Employees as employees who were subject to the employment policies, in whole or in part, and
2 therefore suffered the same or substantially similar violations, in whole or in part.

3 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants
4 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
5 wages for all hours worked, including the applicable minimum, regular, and overtime wages,
6 and that they were not receiving all wages earned for work that was required to be performed. In
7 violation of the Labor Code and IWC Wage Orders, Defendants failed to pay Plaintiff and
8 Aggrieved Employees for all hours worked. Accordingly, Defendants failed to pay Plaintiff and
9 Aggrieved Employees all earned minimum, regular, and/or overtime compensation.

10 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants
11 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
12 required meal periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
13 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty meal
14 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
15 and policy of not providing timely meal periods. Defendant failed to pay an additional hour of
16 pay to Plaintiff and Aggrieved Employees for late meal periods. As a result of Defendants'
17 unlawful policy and practice, Plaintiff and Aggrieved Employees did not receive all meal periods
18 or payment of one (1) additional hour of pay at Plaintiff's and Aggrieved Employees' regular
19 rate of pay when they did not receive a timely, uninterrupted 30 minute off-duty meal period.

20 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants
21 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive all
22 required rest periods or payment of one (1) additional hour of pay at Plaintiff and Aggrieved
23 Employees' regular rate of pay when they did not receive a timely, uninterrupted off-duty rest
24 period. In violation of the Labor Code and IWC Wage Orders, Defendants had a pattern, practice,
25 and policy of not providing timely rest periods. Defendants failed to pay an additional hour of
26 pay to Plaintiff and Aggrieved Employees for each rest periods were not provided or was
27 interrupted. As a result of Defendants' unlawful policy and practice, Plaintiff and Aggrieved
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1 Employees did not receive all required rest periods or payment of one (1) additional hour of pay
2 at Plaintiff's and Aggrieved Employees' regular rate of pay when they did not receive a timely,
3 uninterrupted 10 minute off-duty rest period.

4 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants
5 knew or should have known that Plaintiff and certain Aggrieved Employees were entitled to
6 timely payment of wages due upon separation of employment. In violation of the Labor Code,
7 Plaintiff and certain Aggrieved Employees did not receive payment of all wages due, within
8 permissible time periods, upon separation of employment.

9 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants
10 knew or should have known that Plaintiff and Aggrieved Employees were entitled to receive
11 itemized wage statements that accurately showed their actual hours worked, total hours worked,
12 number of hours worked at each hourly rate, gross and net wages earned, and correct employer
13 information in accordance with California law. As a result of the wage violations specified
14 above, and in violation of the Labor Code, Plaintiff and Aggrieved Employees were not provided
15 with accurate itemized wage statements that accurately reported their gross and net wages
16 earned, total hours worked, each applicable rate of pay in effect during the pay period with the
17 corresponding number of hours worked, and the address of the legal entity that is the employer,
18 among other things.

19
20 Plaintiff is informed and believes, and thereon alleges, that Defendants knew or should
21 have known that Defendants were required to maintain accurate records of the hours
22 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code,
23 Defendants failed to maintain accurate records of hours worked by Plaintiff and
24 Aggrieved Employees due to its off-the-clock and/or unfair rounding practices, among
25 other things.
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1 **FIRST CAUSE OF ACTION**

2 **(Civil Penalties Under the Private Attorneys General Act,**
3 **Labor Code § 2699 et seq., For Violations of the Labor Code)**

4 28. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
5 Complaint as if fully alleged herein.

6 29. By this complaint, Plaintiff brings this case as a representative action seeking
7 penalties for himself, the Aggrieved Employees, and the State of California in a representative
8 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
9 employee who was employed by Defendants and subject to at least one of the Labor Code
10 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
11 his notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
12 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and
13 2802.

14 30. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
15 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code
16 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
17 not to investigate, or after 65 days have passed without notice from the LWDA.

18 31. Prior to filing this complaint, on July 19, 2023, Plaintiff gave written notice of
19 the specific provisions alleged to have been violated, including the facts and theories to support
20 the alleged violations, as required by Labor Code section 2699.3 to Defendant's AI
21 INDUSTRIES, LLC, and AI LLC. The written notice was given via certified mail to Defendants,
22 and the LWDA by electronically filing the notice via the Department of Industrial Relations
23 website. Plaintiff was given an LWDA case number of LWDA-CM- 969424-23. True and correct
24 copies of Plaintiff's notices to the LWDA and Defendant are attached hereto as **Exhibit A**.
25

26 32. The LWDA has not provided Plaintiff with any notice that it intends to investigate
27 the violations as alleged in either of Plaintiff's notices, and more than 65 calendar days have
28 elapsed since the postmark date on the latter notice.

33. California Labor Code §§2698-2699.5, in relevant part provides, “any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency...for a violation of this code, may, as an alternative, be recovered through a civil action brought by an Aggrieved Employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.”

34. As an Aggrieved Employee, Plaintiff brings this civil action to recover civil penalties for Defendant's Labor Code violations.

First Violation

(Failure to Provide Meal Periods, in Violation of Labor Code Section 512)

35. Under California Labor Code §512(a), “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.”

36. Defendants violated Labor Code § 512 by failing to provide Plaintiff, and other qualifying employees who worked shifts of greater than five hours, meal periods within the first five hours of the shifts worked. Defendants failed to pay Plaintiff one hour's pay at Plaintiff's regular rate of pay for each day Defendants failed to provide a meal period in compliance with section 512.

Second Violation

(Failure to Provide Rest Periods, in Violation of Labor Code Section 226.7)

37. Under California Labor Code §226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”

38. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle

of each work 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.”

39. Defendants failed to authorize and permit Plaintiff and other employee to take rest periods and mandated by the Wage Order.

40. Under §226.7(c), an employer who violates §226.7(b), “...shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”

41. Defendants failed to pay Plaintiff and other employees who were not provided rest periods one hour of pay at their regular rate of pay.

Third Violation

(Failure to Provide Complete and Accurate Wage Statements, in Violation of Labor Code Section 226)

42. Under California Labor Code §226(a), an employer is legally obligated to provide its employees, semi-monthly or at the time of payment of wages, “an accurate itemized statement in writing...”

43. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants’ Labor Code violations alleged herein, as well as attorney’s fees and costs, under Labor Code § 2699.

Fourth Violation

(Failure to Pay Overtime Wages)

44. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Orders, an employer is required to compensate employees for all overtime, which is calculated at one and one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

45. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Fifth Violation

(Failure to Pay Minimum Wages)

46. Pursuant to California Labor Code §§ 1194, 1197, and IWC Wage Orders, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

47. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendant's Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Sixth Violation

(Failure to Timely Pay Wages During Employment)

48. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, an employer is required to pay its employees between the 16th and 26th day of the month during which the labor was performed. California Labor Code § 204 also provides that for all labor performed between the 16th and 26th days of any calendar month, Defendants were required to pay their employees between the 1st and 15th day of the following calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in excess of the normal work period shall be paid no later than the payday of the next regular payroll period.

49. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under Labor Code § 2699.

Seventh Violation

(Failure to Pay All Wages Due to Discharged and Quitting Employees)

50. Pursuant to California Labor Code § 201, 202, and 203, Defendant is required to

1 pay all earned and unpaid wages to an employee who is discharged. California Labor Code §
2 201 mandates that if an employer discharges an employee, the employee's wages accrued and
3 unpaid at the time of discharge are due and payable immediately.

4 51. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
5 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
6 Labor Code § 2699.

7 **Eighth Violation**

8 **Failure to Reimburse Business Expenses in Violation of Labor Code § 2802**

9 **(Against all Defendants and DOES 1 to 50, inclusive)**

10 52. Labor Code § 2802 provides that an employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct
12 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
13 the employer.

14 53. Defendants failed to indemnify and reimburse Plaintiff for all necessary
15 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
16 job duties.

17 54. Pursuant to Labor Code § 2802, Plaintiff is entitled to recover business expenses
18 incurred as a result of discharging his duties, including interest.

19 55. Plaintiff, on behalf of the State of California and the LWDA, seeks civil penalties
20 for Defendants' Labor Code violations alleged herein, as well as attorney's fees and costs, under
21 Labor Code § 2699.

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Dated: October 25, 2023

- Respectfully Submitted,

By: Justin Lo
Justin Lo, Esq.
Attorney for Plaintiff BARIS E. HARVEY

EXHIBIT A



NOTICE OF LABOR CODE VIOLATIONS - PAGA
(Labor Code § 2699.3)

DATE July 19, 2023

DELIVERY Online Filing

RECIPIENTS California
Workforce Development Agency
PAGAfilings@dir.ca.gov

SUBJECT: Baris E. Harvey v. AI INDUSTRIES LLC.; ET AL — NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear Representative:

The office represents Baris E. Harvey (“Mr. Harvey”) with respect to his claims against AI INDUSTRIES LLC and AI LLC. (“Employer”) for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail. The above-named Employers are joint employers as they engaged Mr. Harvey and Aggrieved Employees as there was sufficient control over wages, working conditions, whether directly or indirectly. Employers are a corporation doing business in the State of California. Employers are steel fabricators and finishers. Employers jointly employed Mr. Harvey from approximately March 2022 to approximately June 21, 2023, as a non-exempt hourly employee. During his employment with Employers, Mr. Harvey was employed to perform maintenance work at Employers’ two factory locations located at 1725 E Bayshore Rd, Ste 101 Redwood City, CA 94063 and 420 South Vasco Rd. Livermore CA 94551.

Mr. Harvey intends to seek penalties for violations of the California Labor Code which are recoverable under California Labor Code section 2698, et seq., the Private Attorneys General Act of 2004 (“PAGA”). Mr. Harvey is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former non-exempt employees of any of the Employers (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3.

As detailed below, Employers violated several of California’s wage and hour laws during Mr. Harvey employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800



and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including inter alia, IWC Wage Order No. 5. The claims made on behalf of Mr. Harvey and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION.

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Mr. Harvey and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

First, Employers regularly required Mr. Harvey and Aggrieved Employees to work off-the-clock in order to complete their duties and responsibilities. This off-the-clock work included, amongst other things, requiring Mr. Harvey and Aggrieved Employees to: (1) respond to Employers and work-related requests and perform work while clocked out for purported meal breaks; (2) perform work before clocking in for the start of their shift; and (3) perform work after clocking out for the end of their shift. Mr. Harvey and Aggrieved Employees were not compensated for this off-the-clock work, resulting in a failure to pay minimum wages and straight time wages. Moreover, this off-the-clock work typically caused Mr. Harvey and Aggrieved Employees to work more than eight (8) hours in a day and forty (40) hours in week, resulting in a failure to pay overtime compensation.

In addition, there is illegal downward time rounding policy and practice that deprives Mr. Harvey and Aggrieved Employees of all compensable work time. For any premium pay, non discretionary bonus pay and retroactive pay was not factored into the payment of any premium pay.

In addition to requiring Mr. Harvey and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Mr. Harvey and Aggrieved Employees, which resulted in a failure to pay Mr. Harvey and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Mr. Harvey and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration.

As a result of the foregoing practices, Employers have failed to pay Mr. Harvey and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.



Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. FAILURE TO PROVIDE MEAL PERIODS AND PAY MEAL PERIOD PREMIUMS

Employers failed to provide Mr. Harvey and Aggrieved Employees with legally compliant 30-minute meal periods. Employers required Mr. Harvey and Aggrieved Employees to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Mr. Harvey and Aggrieved Employees were told to continue working past the 5th hour of work in order to finish their workload. Further, Mr. Harvey and Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Mr. Harvey and Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. On the occasions that Mr. Harvey and Aggrieved Employees did take a meal period, their meal periods were frequently interrupted or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Harvey and other Aggrieved Employees from taking timely, complete and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded its own purported meal period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Mr. Harvey and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Mr. Harvey and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Harvey and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Mr. Harvey and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during meal periods, which included responding to in-person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Harvey and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on completing job requirements over employees' right to receive timely, uninterrupted, and duty-free meal periods.



Mr. Harvey and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the meal periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), 512(a) and 1198.

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; penalties pursuant to California Labor Code California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. FAILURE TO AUTHORIZE AND PERMIT REST PERIODS AND PAY REST PERIOD PREMIUMS.

Employers failed to authorize and permit Mr. Harvey and Aggrieved Employees take legally compliant 10-minute periods. Employers required Mr. Harvey and Aggrieved Employees to work through rest periods. Mr. Harvey and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Mr. Harvey and Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Mr. Harvey and Aggrieved Employees were never completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Mr. Harvey and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels, affecting all hourly-non-exempt employees, failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Mr. Harvey and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Mr. Harvey and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Mr. Harvey and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Mr. Harvey and other Aggrieved Employees to remain on-call and respond to work-related requests at all times, including during rest periods, which included responding to in person verbal interruptions; and (7) Employers' policy and culture prevented Mr. Harvey and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods



because of the priority placed on completing job requirements over employees' right to receive rest periods.

Mr. Harvey and Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for the rest periods which were not provided to them in compliance with California law.

Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 226.7(a), and 1198.

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code sections 558 and 1199 penalties; and attorneys' fees and costs.

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Harvey and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 204(a).

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

5. FAILURE TO PAY ALL WAGES DUE TO DISCHARGED AND QUTTING EMPLOYEES.

As to each pay period, Employers have failed to timely pay all wages earned because Mr. Harvey and Aggrieved Employees were not paid all the wages they were owed including, inter alia, overtime compensation, straight time wages, and meal and rest period premiums. Accordingly, Employers violated California Labor Code section 201(a), 202(a) and 203(a).

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to California Labor Code sections 210 and 1199; and attorneys' fees and costs.

6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Mr. Harvey and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. The name of the legal employing entity in the California Business Search is AI INDUSTRIES LLC Mr. Harvey and Aggrieved Employees have paystubs indicating the legal entity name is AIIndustries LLC. Accordingly, Employers violated California Labor Code section 226(a).



Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

7. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Mr. Harvey and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d).

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; California Labor Code section 1174.5 penalties; and attorneys' fees and costs.

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of her or her job duties or in direct consequence of his or her obedience to the directions of the employer. During the relevant time period, Mr. Harvey and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Mr. Harvey and Aggrieved Employees of their personal cellular phone to send and receive messages and calls with supervisors to understand their duties and the scope of work. The current reimbursement policy for cellular phones and Mr. Harvey's vehicle use is insufficient reimbursement of the actual costs borne by Mr. Harvey and Aggrieved Employees.

Accordingly, Employers violated IWC Order No. 5 and California Labor Code sections 2800 and 2802.

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; penalties pursuant to paragraph (20)(A) of IWC Wage Order No. 5; and attorneys' fees and costs.

9. FAILURE TO PAY VACATION TIME.

Pursuant to California Labor Code section 227.3, ". . . whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated without having taken off her vested vacation time, all vested vacation shall be paid to him as wages at her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served." During the relevant time period, Employers failed to pay Mr. Harvey and other Aggrieved Employees for all earned and unused and accrued vacation time at their final rate of



pay at the time of termination of their employment. Accordingly, Employers have violated California Labor Code section 227.3.

Mr. Harvey and Aggrieved Employees will therefore seek PAGA default penalties pursuant to Labor Code section 2699; California Labor Code section 227 penalties; and attorneys' fees and costs.

Sincerely,

JUSTIN LO ESQ.

Notice provided to Employers via Certified Mail

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