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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE**

BRANDON FIORE, an individual, on behalf
of the State of California,

Plaintiff,

v.

THE PEP BOYS MANNY MOE & JACK
LLC, a California limited liability company;
DOES 1 through 10, inclusive,

Defendants.

CASE NO.: **CVRI 2305031**

**REPRESENTATIVE ACTION
COMPLAINT FOR VIOLATION OF THE
CALIFORNIA PRIVATE ATTORNEYS
GENERAL ACT OF 2004**

[California Labor Code § 2698, *et seq.*]

1. Plaintiff Brandon Fiore (“Plaintiff”) brings this representative action on behalf of the State of California, pursuant to the California Private Attorneys General Act of 2004 (“PAGA”), against The Pep Boys Manny Moe & Jack LLC (“Pep Boys”), and Does 1 through 10, inclusive (collectively, “Pep Boys” or “Defendant”). Plaintiff makes the following allegations on information and belief, except as to allegations pertaining to Plaintiff individually, which are based on his personal knowledge.

INTRODUCTION

2. Defendant has implemented common policies and practices that have resulted in systematic violations of California’s Labor Code and the applicable Industrial Welfare Commission (“IWC”) Wage Order(s). Accordingly, Plaintiff, on behalf of the State of California, brings this representative action to recover civil penalties for the California Labor and Workforce Development Agency (“LWDA”), himself, and all other aggrieved employees—i.e., non-exempt employees who worked for Defendant in California during the statute of limitations period—predicated on Defendant’s failure to provide legally compliant meal periods and rest breaks and failure to provide compensation for missed and otherwise unlawful meal periods and rest breaks, unpaid regular, overtime, and minimum wage compensation, failure to timely pay wages, failure to pay all wages owed and due to discharged or quitting non-exempt employees, failure to maintain required records, failure to provide accurate itemized wage statements, failure to provide COVID-19 supplemental paid sick leave, failure to reimburse for employment-related expenses, and failure to provide notice of employer-related information at the time of hiring.

JURISDICTION AND VENUE

3. The Superior Court of the State of California has jurisdiction in this matter because Plaintiff is a resident of the State of California and Defendant regularly conducts business in the State of California. No federal question is at issue because Plaintiff's claims are based solely on California law.

4. Venue is proper in this judicial district and the County of Riverside because Plaintiff and other aggrieved employees performed work for Defendant in the County of Riverside, and a substantial portion of the unlawful actions and omissions, as alleged herein, occurred in the County of

1 Riverside.

2 **THE PARTIES**

3 5. Plaintiff is a resident of the State of California and was a non-exempt employee of
4 Defendant who worked at Defendant's store in Temecula, California during the time period
5 beginning one year and 65 days prior to the filing of this Complaint to the present—i.e., the statute of
6 limitations period.

7 6. On information and belief, and at all times relevant herein, The Pep Boys Manny Moe
8 & Jack LLC has been a California limited liability company that has done business in the State of
9 California as automotive services company.

10 7. The true names and capacities of Does 1 through 10, inclusive, are unknown to
11 Plaintiff at this time, and Plaintiff therefore sues such Defendants under fictitious names. Plaintiff is
12 informed and believes, and thereon alleges, that each Defendants designated as a Doe is in some
13 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
14 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
15 Doe Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
16 names and capacities of such Doe Defendants when ascertained.

17 **REPRESENTATIVE ACTION ALLEGATIONS**

18 8. On July 14, 2023, Plaintiff gave written notice by certified mail, pursuant to California
19 Labor Code § 2699.3, to the LWDA and Defendant, of the specific provisions of the California Labor
20 Code and applicable IWC Wage Orders alleged to have been violated, including the facts and
21 theories to support the alleged violations. Within sixty-five (65) calendar days of the postmark date of
22 Plaintiff's notice letter, dated July 14, 2023, the LWDA did not inform Plaintiff that it intends to
23 investigate the alleged violations. Nor did Defendant respond to any of the allegations contained in
24 Plaintiff's notice letter. Therefore, Plaintiff has complied with all requirements set forth in California
25 Labor Code § 2699.3 to commence a representative action under the PAGA.

26 9. Plaintiff was a non-exempt employee of Defendant during the statute of limitations
27 period. Plaintiff also personally experienced violations of the California Labor Code during his
28 employment with Defendant, as alleged herein.

1 **FACTUAL ALLEGATIONS**

2 **Failure to Provide Required Meal Periods**

3 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 11]**

4 10. During the statute of limitations period, Defendant has required, permitted or
5 otherwise suffered Plaintiff and other aggrieved employees to perform work during their meal
6 periods, to completely skip their meal periods, to take late and short meal periods, and Defendant has
7 otherwise failed to provide the required meal periods to Plaintiff and other aggrieved employees as
8 required under California Labor Code §§ 226.7, 512, and IWC Wage Order No. 7-2001, § 11.

9 11. Defendant has implemented several common policies and practices that have caused
10 Plaintiff and other aggrieved employees to systematically miss and otherwise take non-compliant
11 meal periods.

12 12. Defendant has implemented a common policy of understaffing and failing to
13 adequately inform Plaintiff and aggrieved employees of their rights to take meal periods. As a direct
14 consequence, Plaintiff and other aggrieved employees had so much work to complete within their
15 scheduled shifts that they are forced to skip their meal periods altogether, to take them after working
16 longer than five (5) hours, to perform work during their meal periods, or return to work after taking
17 less than a thirty (30) minute meal period.

18 13. Despite work conditions that systematically result in missed and non-compliant meal
19 periods, and in order to keep labor costs down, Defendant has implemented a policy and practice of
20 failing to pay meal period premium payments when owed and due. Thus, Defendant has also violated
21 California Labor Code §§ 226.7 and § 11 of the applicable IWC Wage Order by failing to
22 compensate Plaintiff and other aggrieved employees who were not authorized and permitted to take a
23 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
24 regular rate of pay for each workday that such a meal period was not authorized or permitted.

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1 **Failure to Provide Required Rest Breaks**

2 **[Cal. Lab. Code §§ 226.7, 512; IWC Wage Order No. 7-2001, § 12]**

3 14. During the statute of limitations period, Defendant has failed to authorize and permit
4 Plaintiff and other aggrieved employees to take rest breaks as required under California Labor Code
5 §§ 226.7 and 512, and IWC Wage Order No. 7-2001, § 12.

6 15. The same or similar policies and practices that deprive Plaintiff and other aggrieved
7 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
8 take their rest breaks. Namely, Defendant's failure to adequately inform Plaintiff and other aggrieved
9 employees of their rights to take rest breaks, failure to adequately schedule rest breaks, and
10 understaffing, all place business needs ahead of the ability to take rest breaks. As a result, Plaintiff
11 and other aggrieved employees regularly missed or otherwise took non-compliant rest breaks.

12 16. Defendant further violated California Labor Code § 226.7 and IWC Wage Order No.
13 7-2001, § 12, by failing to pay Plaintiff and other aggrieved employees who were not provided with a
14 rest break, in accordance with the applicable wage order, one additional hour of compensation at the
15 proper regular rate of pay for each workday that a rest break was not provided.

16 **Failure to Pay Overtime Wages**

17 **[Cal. Lab. Code §§ 510, 1194, 1198; IWC Wage Order No. 7-2001, § 3]**

18 17. Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 7-2001, §
19 3, Defendant was and is required to compensate Plaintiff and other aggrieved employees for all
20 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
21 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
22 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
23 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
24 consecutive day of work in any workweek.

25 18. During the statute of limitations period, Defendant failed to compensate Plaintiff and
26 other aggrieved employees for all overtime hours worked as required under the foregoing provisions
27 of the California Labor Code and IWC Wage Order by requiring, permitting or suffering Plaintiff and
28 other aggrieved employees to work off-the-clock, including *inter alia*, during meal periods and rest

breaks, but not compensating them for this time, inaccurately recording time in which Plaintiff and other aggrieved employees worked, failing to include all forms of required remuneration (e.g., commissions, the value of meal period and rest break premium payments, and non-discretionary bonuses) in the calculation of the regular rate of pay, other methods to be discovered.

19. Defendant has knowingly and willfully refused to perform its obligations to compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of California Labor Code §§ 510, 1194 and 1198 and IWC Wage Order No. 7-2001, § 3.

Failure to Minimum Wages

[Cal. Lab. Code §§ 1194, 1197; IWC Wage Order No. 7-2001, § 4]

20. Pursuant to California Labor Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful.

21. During the statute of limitations period, Defendant has required Plaintiff and other aggrieved employees to work off-the-clock, including *inter alia*, during meal periods and rest breaks, but did not compensate them for this time. In addition, Defendant inaccurately recorded time that Plaintiff and other aggrieved employees worked, or failed to record this time altogether, for example, during rest breaks. As a result, Plaintiff and other aggrieved employees have failed to receive minimum wages.

Failure to Timely Pay Wages During Employment

[Cal. Lab. Code § 204]

22. Pursuant to California Labor Code § 204, for all labor performed between the 1st and 15th days of any calendar month, Defendant is required to pay nonexempt 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, Defendant is required to pay non-exempt employees between the 1st and 10th 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.

1 23. During the statute of limitations period, Defendant has knowingly and willfully failed
2 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
3 regular payroll period as required by California Labor Code § 204.

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5 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

6 **[Cal. Lab. Code §§ 201-203]**

7 24. Pursuant to California Labor Code §§ 201, 202 and 203, Defendant is required to pay
8 all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
9 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
10 the time of discharge are due and payable immediately.

11 25. Furthermore, pursuant to California Labor Code § 202, Defendant is required to pay
12 all accrued wages due to an employee no later than 72 hours after the employee quits his or her
13 employment, unless the employee provided 72 hours previous notice of his or her intention to quit, in
14 which case the employee is entitled to his or wages at the time of quitting.

15 26. California Labor Code § 203 provides that if an employer willfully fails to pay, in
16 accordance with California Labor Code §§ 201 and 202, any wages of an employee who is
17 discharged or who quits, the employer is liable for waiting time penalties in the form of continued
18 compensation to the employee at the same rate for up to 30 workdays.

19 27. During the statute of limitations period, Defendant has willfully failed to pay accrued
20 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
21 California Labor Code §§ 201 and 202. Because Defendant has failed and continue to fail to properly
22 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime wages,
23 and compensation for non-compliant meal periods and rest breaks, Defendant has also willfully failed
24 and continue to fail to pay accrued wages and other compensation to Plaintiff and other aggrieved
25 employees in accordance with California Labor Code §§ 201 and 202.

26 **Failure to Maintain Required Records**

27 **[Cal. Lab. Code §§ 226(a), 1174(d); IWC Wage Order No. 7-2001, § 7]**

28 28. During the statute of limitations period, Defendant has knowingly and intentionally

1 failed to maintain records as required under California Labor Code §§ 226(a) and 1174(d) and IWC
2 Wage Order No. 7-2001, § 7, including but not limited to, the following records: total daily hours
3 worked by each employee; applicable rates of pay; all deductions; meal periods; time records
4 showing when each employee begins and ends each work period; and accurate itemized statements.
5 Defendant has also failed to properly inform Plaintiff and other aggrieved employees of how many
6 COVID-19 Supplemental Paid Sick leave hours remain available on their wage statements or in a
7 separate writing. Moreover, Defendant does not provide non-exempt employees with proper meal
8 periods and rest breaks, but omits from the wage statements such compensation and/or remuneration
9 owed and due. Additionally, Defendant requires non-exempt employees to work off-the-clock but
10 fails to record this time or compensate them for this time, which invariably results in inaccurate time
11 and payroll records.

12 **Failure to Furnish Accurate Itemized Wage Statements**

13 **[Cal. Lab. Code § 226(a); IWC Wage Order No. 7-2001, § 7]**

14 29. During the statute of limitations period, Defendant has routinely failed to provide
15 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
16 Defendant's pay stubs violate California Labor Code § 226 in that Defendant has not provided
17 Plaintiff and other aggrieved employees with proper meal periods and rest breaks but failed to include
18 in their wage statements one (1) additional hour of compensation at their regular rates of pay for each
19 missed or non-compliant meal or rest period. *See Naranjo v. Spectrum Sec. Servs., Inc.* (2022) 13
20 Cal.5th 93, 972 ("failure to report premium pay for missed breaks can support monetary liability
21 under section 226 for failure to supply an accurate itemized statement reflecting an employee's gross
22 wages earned, net wages earned, and credited hours worked.").

23 30. In addition, Defendant does not properly pay Plaintiff and other aggrieved employees
24 regular, overtime, and minimum wages owed and due to them, resulting in accurate wage statements.
25 Defendant also suffers and permits Plaintiff and other aggrieved employees to work off-the-clock
26 without compensation, yet such compensation and/or remuneration is not listed on the wage
27 statements. Further, Defendant failed to list how many COVID-19 Supplemental Paid Sick leave
28 hours remain available on Plaintiff's and other aggrieved employees' wage statements.

1 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

2 **[Cal. Lab. Code § 2802]**

3 31. California Labor Code § 2802(a) requires an employer to indemnify an employee for
4 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge
5 of her his or her duties, or of his or her obedience to the directions of the employer.

6 32. During the statute of limitations period, Defendant has required Plaintiff and other
7 aggrieved employees to use their own personal devices, including cellular phones, to perform work-
8 related duties. In addition, Defendant did not reimburse Plaintiff and other aggrieved employees for
9 the costs of safety equipment (e.g., face masks and gloves) during the COVID-19 pandemic.

10 **Failure to Provide COVID-19 Supplemental Sick Leave**

11 **[Cal. Lab. Code § 248.1(b)(3)(A); Cal. Lab. Code § 248.2]**

12 33. During the statute of limitations period, Defendant has failed to provide supplemental
13 COVID-19 sick leave. As of March 29, 2021, Defendant employed 26 or more aggrieved employees.
14 As such, Defendant was required to provide 80 hours of COVID-19 supplemental paid sick leave,
15 and compensate Plaintiff and other aggrieved employees at their regular rates of pay for supplemental
16 sick leave—i.e., the highest regular rate of pay. *See* Cal. Lab. Code § 248.1(b)(3)(A). Defendant was
17 obligated to provide COVID-19 supplemental sick leave in addition to regular sick leave. *See* Cal.
18 Lab. Code § 248.1(b)(2)(D). Further, Defendant is prohibited from requiring aggrieved employees to
19 use any other paid or unpaid leave, paid time off, or vacation time provided by the hiring entity to the
20 covered worker before the covered worker uses COVID-19 supplemental paid sick leave or in lieu of
21 COVID-19 supplemental paid sick leave. *See* Cal. Lab. Code § 248.1(b)(4). Defendant has failed to
22 comply with the foregoing sections of the COVID-19 supplemental paid sick leave laws.

23 **Failure to Provide Suitable Seating**

24 **[IWC Wage Order No. 7-2001, § 14]**

25 34. IWC Wage Order No. 7-2001, § 14 provides:

26 “(A) All working employees shall be provided with suitable seats when the nature
27 of the work reasonably permits the use of seats.

28 (B) When employees are not engaged in the active duties of their employment and

1 the nature of the work requires standing, an adequate number of suitable seats
2 shall be placed in reasonable proximity to the work area and employees shall be
3 permitted to use such seats when it does not interfere with the performance of
their duties.”

4 35. Defendant has failed to provide suitable seating in violation of subsections (A) and (B)
5 of IWC Wage Order No. 7-2001, § 14.

6 36. First, Defendant has violated subsection (A) by not providing any seats or stools at the
7 cash registers, or anywhere on the sales floor, at its brick-and-mortar stores in California. The nature
8 of the work does not prevent the use of seats, as Plaintiff and other aggrieved employees are
9 primarily responsible for assisting customers and ringing up customer transactions. To that end, they
10 are largely situated behind a cash register, during which time they could easily be seated—instead of
11 being forced to stand during their entire shift.

12 37. More specifically, Defendant could provide seats to its employees without unduly
13 interfering with any standing tasks that Plaintiff and other aggrieved employees are required to
14 perform from time-to-time, there would not be an unreasonable amount of transition from sitting to
15 standing that could interfere with Plaintiff and other aggrieved employees’ work, the opportunity to
16 sit at times during a shift would not impact the quality and effectiveness of their overall job
17 performance, and the physical layout of Defendant’s stores permits the provision of seats.

18 38. Second, in the alternative, and only to the extent it is determined that the nature of the
19 work performed by Plaintiff and other aggrieved employees requires standing, Defendant has violated
20 subsection (B) by not having any seats in reasonable proximity to the work area for use when doing
21 so would not interfere with their job duties. Indeed, Defendant has no seats anywhere near the sales
22 floor at its California stores.

23 39. Consequently, Defendant has violated California Labor Code § 1198, which makes it
24 unlawful for an employer to employ a worker under conditions of labor that are prohibited by an
25 applicable wage order. *See* Cal. Lab. Code § 1198.

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1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Lab. Code § 2698, *et seq.*]**

4 ***(Against all Defendants)***

5 40. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 39.

7 41. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of himself and other current and
9 former non-exempt employees of Defendant pursuant to the procedures specified in California Labor
10 Code § 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged
11 California Labor Code violations was committed against Plaintiff during the statute of limitations
12 period.

13 42. Pursuant to California Labor Code § 2699, Plaintiff seeks to recover civil penalties
14 under the PAGA, for Defendant’s violations of the provisions of the California Labor Code and IWC
15 Wage Order alleged herein.

16 43. All civil penalties sought and recovered under this action will be allocated as follows:
17 seventy-five (75) percent to the State of California and twenty-five (25) percent to Plaintiff and
18 aggrieved employees.

19 44. Plaintiff additionally seeks reasonable attorneys’ fees and costs pursuant to California
20 Labor Code § 2699(g)(1).

21 **PRAYER FOR RELIEF**

22 **WHEREFORE**, Plaintiff, on behalf of himself and the State of California, prays for relief
23 against Defendant as follows:

- 24 1. For civil penalties pursuant to California Labor Code § 2699 according to proof;
- 25 2. For reasonable attorneys’ fees and costs pursuant to California Labor Code §
- 26 2699(g)(1), California Code of Civil Procedure § 1021.5, and/or any other applicable provisions
- 27 providing for attorneys’ fees and costs; and
- 28 3. For such further relief that the Court may deem just and proper.

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DATED: September 22, 2023

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