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13 Attorneys for Plaintiff CARLOS A AGUILAR,
14 on behalf of himself and current and former aggrieved employees

15 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
16 **FOR THE COUNTY OF SOLANO**

17 CARLOS A AGUILAR, on behalf of himself and
18 current and former aggrieved employees,

19 Plaintiff,

20 vs.

21 AMCOR RIGID PACKAGING USA, LLC; and
22 DOES 1 to 100, inclusive,

23 Defendants.

FILED/ENDORSED
Clerk of the Superior Court

NOV 08 2023

By **S. BRACK**
DEPUTY CLERK

ASSIGNED TO
JUDGE **ALESIA JONES** *thru 12/31/23*
FOR ALL PURPOSES
Assigned to Judge Tim Kan effective 1-24

Case No.: **CU23-05236**

PAGA ACTION

**PLAINTIFF CARLOS A AGUILAR'S
COMPLAINT FOR:**

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

24 **COMES NOW** Plaintiff CARLOS A AGUILAR ("Plaintiff"), who alleges and complains
25 against Defendants AMCOR RIGID PACKAGING USA, LLC and DOES 1 to 100, inclusive
26 (collectively "Defendants") as follows:

27 **I. INTRODUCTION**

28 1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself
and other current and former aggrieved employees of Defendants who worked as hourly non-
exempt employees in California during the relevant time period seeking civil penalties associated
with Defendants' violation of the Labor Code based on Defendants': failure to pay wages for all
overtime hours worked at the overtime rate of pay; failure to authorize or permit all legally

1 required and/or compliant meal periods, pay meal period premium wages, and/or pay meal period
2 premium wages at the regular rate of pay; failure to authorize or permit all legally required and/or
3 compliant rest periods, pay rest period premium wages, and/or pay rest period premium wages at
4 the regular rate of pay; failure to pay wages for accrued paid sick time at the regular rate of pay;
5 failure to timely pay earned wages during employment; statutory penalties for failure to provide
6 accurate wage statements; statutory waiting time penalties in the form of continuation wages for
7 failure to timely pay employees all wages due upon separation of employment; Plaintiff seeks on a
8 representative basis, following notice to the Labor and Workforce Development Agency, civil
9 penalties, reasonable attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought
10 on behalf of Plaintiff, the State of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to Solano County, at 2425 S. Watney Way, Fairfield,
20 California, 94533.

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

25 **III. PARTIES**

26 4. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of himself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in Fairfield from
6 approximately August 2013, until on or about February 24, 2023.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant AMCOR
8 RIGID PACKAGING USA, LLC is authorized to do business within the State of California and is
9 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
10 relevant hereto were persons acting on behalf of Defendant AMCOR RIGID PACKAGING USA,
11 LLC in the establishment of, or ratification of, the aforementioned illegal wage and hour practices
12 or policies. Defendant AMCOR RIGID PACKAGING USA, LLC operates in Solano County and
13 employed Plaintiff and aggrieved employees in Solano County, including but not limited to, at
14 2425 S. Watney Way, Fairfield, California 94533.

15 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

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

26 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

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

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
9 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

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

12 11. During Plaintiff's employment and continuing through the present, Plaintiff alleges
13 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 246, 510, 512, 1194,
14 1197, and the applicable Wage Orders.

15 12. Specifically, Defendants have committed the following violations of California
16 Labor Code:

17 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services which inure to the benefit of the employer.

23 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
24 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
25 Wage Orders.

26 15. In this case, Plaintiff and other current and former aggrieved California-based
27 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
28 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former

1 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
2 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
3 not limited to:

4 (a) "Rounding down" or "shaving down" Plaintiffs' and other current and former
5 aggrieved California-based hourly non-exempt employees' total daily hours at the time of their
6 clock-ins and clock-outs, including clock-ins and clock-outs for meal breaks, to the nearest quarter
7 of an hour, to the benefit of Defendants;

8 (b) Requiring Plaintiffs and other current and former aggrieved California-based
9 hourly non-exempt employees who were employed as supervisors, leads, and maintenance
10 mechanics to always keep employer-issued walkie talkies on them during shift, including while
11 off-the-clock during meal breaks.

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

18 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
19 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
20 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
21 which includes all time that an employee is under control of the employer and all time the
22 employee is suffered and permitted to work. This includes the time an employee spends, either
23 directly or indirectly, performing services that inure to the benefit of the employer.'

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

27 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
28 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve

(12) hours in one (1) 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 (8) 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.

Labor Code section 510.

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

(a) "Rounding down" or "shaving down" Plaintiffs' and other current and former aggrieved California-based hourly non-exempt employees' total daily hours at the time of their clock-ins and clock-outs, including clock-ins and clock-outs for meal breaks, to the nearest quarter of an hour, to the benefit of Defendants;

(b) Requiring Plaintiffs and other current and former aggrieved California-based hourly non-exempt employees who were employed as supervisors, leads, and maintenance mechanics to always keep employer-issued walkie talkies on them during shift, including while off-the-clock during meal breaks.

20. Overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, Section 49.1.2.

21. In this case, Plaintiff alleges that when he and other current and former aggrieved California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration including but not limited to shift premium pay and gainshare bonus, for example, when calculating Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

22. The foregoing policies, practices, and/or procedures resulted in time during each workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt

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

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

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

22 25. If an employer fails to provide an employee a meal period in accordance with the
23 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
24 for each workday that a legally required and compliant meal period was not provided. Labor Code
25 section 226.7; Wage Order 4 at §11.

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

1 limited to:

2 (a) Rounding down” or “shaving down” Plaintiffs’ and other current and former
3 aggrieved California-based hourly non-exempt employees’ total daily hours at the time of their
4 clock-ins and clock-outs, including clock-ins and clock-outs for meal breaks, to the nearest quarter
5 of an hour, to the benefit of Defendants;

6 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees employed as supervisors, leads, and maintenance mechanics to keep
8 employer-issued walkie talkies on them at all times during shift, including while off-the-clock
9 during meal breaks.

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

16 28. Finally, on occasions when Defendants paid Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
18 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
19 additional hour of pay at Plaintiff’s and other current and former aggrieved California-based
20 hourly non-exempt employees ‘regular rate of compensation. Specifically, Defendants maintained
21 a policy, practice, and/or procedure of failing to include all remuneration including but not limited
22 to shift premium pay and gainshare bonus, for example, when calculating Plaintiff’s and other
23 current and former aggrieved California-based hourly non-exempt employees ‘ regular rate of pay
24 for the purpose of paying meal period premium wages.

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

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

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

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

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

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly non-exempt employees employed as supervisors, leads, and maintenance mechanics to keep employer-issued walkie talkies on them at all times during shift, including while during rest breaks.

34. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or

1 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
2 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
3 workday they did not receive legally required and compliant rest periods, in violation of Labor
4 Code section 226.7.

5 35. Finally, on occasions when Defendants did pay Plaintiff and other current and
6 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
7 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
8 one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-
9 based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants
10 maintained a policy, practice, and/or procedure of failing to include all remuneration such as
11 including but not limited to shift premium pay and gainshare bonus, for example, when calculating
12 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
13 regular rate of pay for the purpose of paying rest period premiums.

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

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

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

26 39. Here, Plaintiff and other current and former aggrieved California-based hourly non-
27 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
28 sick days. Also, Plaintiff and similarly situated employees began accruing paid sick days since the

beginning of each of their respective employment with Defendants.

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

41. In this case, Plaintiff alleges that when he and other current and former aggrieved California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as, including but not limited to shift premium pay and gainshare bonus, for example, when calculating Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of calculating and paying sick time.

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

43. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed to timely pay Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’ earned wages (including minimum wages, overtime wages the proper rate, meal period premium wages and/or meal period premium wages at the proper rate, and/or rest

1 period premium wages and/or rest period premium wages at the proper rate), in violation of Labor
2 Code section 204. Defendants' aforementioned policies, practices, and/or procedures resulted in
3 their failure to pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' their earned wages within the applicable time frames outlined in Labor Code
5 section 204.

6 44. **Failure to provide complete and accurate wage statements:** Labor Code section
7 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
8 employee his or her wages, the employer must "furnish each of his or her employees ... an
9 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
10 employee, except for any employee whose compensation is solely based on a salary and who is
11 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
12 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
13 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
14 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
15 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
16 name of the employee and his or her social security number, (8) the name and address of the legal
17 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
18 the corresponding number of hours worked at each hourly rate by the employee."

19 45. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
20 and other current and former aggrieved California-based hourly non-exempt employees all wages
21 earned (including minimum wages, overtime wages the proper rate, meal period premium wages
22 and/or meal period premium wages at the proper rate, and/or rest period premium wages and/or
23 rest period premium wages at the proper rate) rendered Plaintiff's and other current and former
24 aggrieved California-based hourly non-exempt employees' wage statements inaccurate, in
25 violation of Labor Code section 226.

26 46. **Failure to pay employees all wages due at time of termination/resignation:** An
27 employer is required to pay all unpaid wages timely after an employee's employment ends. The
28 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)

1 hours of resignation (Labor Code section 202).

2 47. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
3 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
4 all their earned wages (including minimum wages, overtime wages the proper rate, meal period
5 premium wages and/or meal period premium wages at the proper rate, and/or rest period premium
6 wages and/or rest period premium wages at the proper rate), Defendants failed to pay those
7 employees timely after each employee's termination and/or resignation, in violation of Labor
8 Code sections 201, 202, and 203.

9 48. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
10 employee, on behalf of himself or herself and other current or former employees, to bring a civil
11 action to recover civil penalties against all Defendants pursuant to the procedures specified in
12 Labor Code section 2699.3.

13 49. Plaintiff has complied with the procedures for bringing suit specified in Labor
14 Code section 2699.3. On August 30, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
15 and provided notice to Defendants by certified mail which provided notice of the specific
16 provisions of the Labor Code alleged to have been violated, including the facts and theories to
17 support the violations alleged.

18 50. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
19 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
20 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
21 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
22 to investigate Plaintiff's claims.

23 51. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
24 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 246,
25 510, 512, 1194, and 1197, During Plaintiff's employment and continuing through the present,
26 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
27 following amounts:

28 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512,

one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)];

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

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

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

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

PRAYER FOR RELIEF

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

ON THE FIRST CAUSE OF ACTION:

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

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

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

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

3
4 Dated: November 7, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

5
6
7 By:



Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Aaron D. Boal, Esq.
Attorneys for Plaintiff
CARLOS A AGUILAR
on behalf of himself and current and former
aggrieved employees