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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

RODOLFO D. ROMERO, an individual, on
behalf of himself and the State of California, as a
private attorney general,

Plaintiff,

v.

KENK USA, INC., a California Corporation;
and DOES 1 TO 50,

Defendants.

Case Number: 23STCV20184

**~~[Proposed]~~ Order for Leave to File Plaintiff's
First Amended Complaint and Dismiss Class
Action Claims Without Prejudice**

FILED

Superior Court of California
County of Los Angeles

01/02/2024

David W. Slayton, Executive Officer / Clerk of Court

By: _____ A. He _____ Deputy

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~~PROPOSED~~ ORDER

Pursuant to the stipulation of the Parties and good cause appearing, the Court orders as follows:

1. Plaintiff's class action claims against Defendant are dismissed without prejudice.

2. Plaintiff is granted leave to file and serve a First Amended Complaint, in the form attached as **Exhibit A**, and Plaintiff's First Amended Complaint is deemed filed as of the date that this order is signed by the Court.

3. Defendant shall file a responsive pleading to the First Amended Complaint within thirty (30) days of service of the order approving and entering this stipulation and the FAC.

IT IS SO ORDERED.



A handwritten signature in black ink, appearing to read "Stuart M. Rice".

Dated: January 2, 2024

Stuart M. Rice / Judge

Judge of the Superior Court, County of Los Angeles

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to the action. My business address is 1801 Century Park East, Suite 850, Los Angeles, CA 90067.

I declare that on the date hereof, January 2, 2024, I served the foregoing document(s) described as:

- **ORDER FOR LEAVE TO FILE PLAINTIFF'S FIRST AMENDED COMPLAINT AND DISMISS CLASS ACTION CLAIMS WITHOUT PREJUDICE**

By causing a true copy thereof to be sent to the following individuals and/or parties:

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[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on January 2, 2024, in Los Angeles, California.



Tracy Magaña

EXHIBIT “A”

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 RODOLFO D. ROMERO, an individual, on
behalf of himself and the State of California, as a
12 private attorney general,

13 Plaintiff,

14 v.
15

16 KENK USA, INC., a California corporation; and
17 DOES 1 TO 50,

18 Defendants.
19
20
21

Case Number:

**First Amended Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code Private Attorney General Act of 2004 (“PAGA”) for Violations of California Labor Code Sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and Other Provisions of the California Labor Code

1 Plaintiff Rodolfo D. Romero (“Plaintiff”), on behalf of himself and the State of California, as a
2 private attorney general, complains and alleges of defendants Kenk USA, Inc. and Does 1 to 50
3 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

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

8 2. The “PAGA Period” as used herein is defined as the period from August 23, 2022, and
9 continuing into the present and ongoing.

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

14 4. Plaintiff is informed and believes and thereon alleges that the California Industrial
15 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 7-
16 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
17 tit. 8, § 11070.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
18 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
19 are discovered in litigation.

20 **II. JURISDICTION & VENUE**

21 5. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
23 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
24 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
25 is subject to adjudication in the courts of the State of California.

26 6. This Court has personal jurisdiction over Defendants because Defendants have caused
27 injuries in the County of Los Angeles and the State of California through their acts, and by their
28 violation of the California Labor Code and California state common law. Defendants transact millions

1 of dollars of business within the State of California. Defendants own, maintain offices, transact
2 business, have an agent or agents within the County of Los Angeles, and/or otherwise are found within
3 the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of
4 service of process.

5 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
6 Code of Civil Procedure. Defendants operate within California and do business within Los Angeles
7 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
8 Defendants' employees identified above within Los Angeles County and surrounding counties where
9 Defendants may remotely operate.

10 **III. THE PARTIES**

11 **A. PLAINTIFF**

12 8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
13 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
14 employee in the County of Los Angeles.

15 9. Plaintiff brings this action on behalf of himself and the State of California, as a private
16 attorney general, and on behalf of the following group of aggrieved employees: *All individuals who*
17 *are or were employed by Defendants as non-exempt employees in California during the PAGA Period*
18 (the "Aggrieved Employees").

19 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
20 Defendants during the relevant statutory period.

21 **B. DEFENDANTS**

22 11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
23 to and doing business in Los Angeles County and is and/or was the legal employer of Plaintiff and the
24 other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved
25 Employees were, and are, subject to Defendants' policies and/or practices complained of herein and
26 have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203,
27 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804,
28 and others that may be applicable; California Business and Professions Code sections 17200 through

1 17210 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11070).

2 12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
3 Period, Defendants did (and continue to do) business in the State of California, County of Los Angeles.
4 Defendants operations are headquartered in Los Angeles County.

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

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

21 15. At all relevant times, Defendants, and each of them, were members of and engaged in a
22 joint venture, partnership, and common enterprise, and acting within the course and scope of and in
23 pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and
24 believes, and thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and
25 the other Aggrieved Employees.

26 **IV. COMMON FACTS & ALLEGATIONS**

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

1 17. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
2 for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
3 in this complaint.

4 18. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,
5 working as an hourly, non-exempt cashier for Defendants.

6 **A. MINIMUM WAGE VIOLATIONS**

7 19. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
8 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
9 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
10 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
11 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
12 (Cal. Code of Regs., tit. 8, § 11070.) Labor Code section 1198 makes unlawful the employment of an
13 employee under conditions that the IWC Wage Orders prohibit.

14 20. These minimum wage standards apply to each hour that employees work. Therefore, an
15 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
16 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
17 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

18 21. Here, Defendants failed to fully conform their pay practices to the requirements of the
19 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all
20 hours worked including, but not limited to, all hours they were subject to the control of Defendants
21 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Order.
22 Among other violations, the Aggrieved Employees were subject to the control of Defendants while off-
23 the-clock and did not receive minimum wage for each hour worked.

24 22. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
25 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
26 damages, as follows:

- 27 (1) “For any initial violation that is intentionally committed, one
28 hundred dollars (\$100) for each underpaid employee for each pay period

1 for which the employee is underpaid.”

2 (2) “For each subsequent violation for the same specific offense, two
3 hundred fifty dollars (\$250) for each underpaid employee for each pay
4 period for which the employee is underpaid regardless of whether the
5 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
6 (a).)

7 23. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for
8 all minimum wages. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the
9 Aggrieved Employees are entitled to recover penalties pursuant to California Labor Code section
10 1197.1 in addition to any other applicable penalties..

11 **B. OVERTIME VIOLATIONS**

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

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

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

26 27. These actions were and are in clear violation of California’s overtime laws as set forth
27 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §
28 11070.) As a result of Defendants’ faulty policies and practices, the Aggrieved Employees were not

1 compensated for all hours worked or paid accurate overtime compensation.

2 **C. REST BREAK VIOLATIONS**

3 28. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
4 and are required to provide the Aggrieved Employees with compensated, duty-free rest periods of not
5 less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Order,
6 an employer must authorize and permit all employees to take ten minute duty free rest periods for every
7 major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11070.)

8 29. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
9 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
10 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
11 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
12 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
13 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
14 factor in all nondiscretionary payments for work performed by the employee, including non-
15 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
16 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
17 Orders set when and for how long the rest period must take place and the Labor Code establishes that
18 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
19 their employees when employers fail to provide rest periods.

20 30. The California Supreme Court has held that, during required rest periods, “employers
21 must relieve their employees of all duties and relinquish any control over how employees spend their
22 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
23 control over employees during rest periods requires that employees be “free to leave the employer’s
24 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
25 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
26 policy:

27 “An employer is required to authorize and permit the amount of rest break time
28 called for under the wage order for its industry. If it does not—if, for example,

1 it adopts a uniform policy authorizing and permitting only one rest break for
2 employees working a seven-hour shift when two are required—it has violated
3 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
4 Cal.4th 1004, 1033.)

5 31. Here, Defendants periodically did not permit the Aggrieved Employees to take
6 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section
7 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services,*
8 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
9 of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the
10 Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods
11 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
12 unlawful rest period policies/practices. The Aggrieved Employees were often expected and required to
13 continue working through rest periods to meet the expectations Defendants and finish the workday. In
14 some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed
15 to authorize and/or permit a third mandated rest period. As a result, the Aggrieved Employees were
16 periodically unable to take compliant rest periods.

17 32. In such cases where Defendants did not offer the Aggrieved Employees the opportunity
18 to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
19 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410
20 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not
21 conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court,*
22 *supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law
23 but never authorized; if a break is not authorized, an employee has no opportunity to decline to take
24 it.”].)

25 33. In addition to failing to authorize and permit compliant rest periods, the Aggrieved
26 Employees were not compensated with one hour’s worth of pay at their regular rate of compensation
27 when they were not provided with a compliant rest period in accordance with Labor Code section
28 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable

1 Wage Order.

2 **D. MEAL BREAK VIOLATIONS**

3 34. Labor Code section 512 and the Applicable Wage Order require employers to provide
4 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
5 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
6 more than five hours per day without providing the employee with a meal period of not less than 30
7 minutes”]; Cal. Code of Regs., tit. 8, § 11070 [“No employer shall employ any person for a work
8 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
9 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
10 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
11 employ an employee for a work period of more than 10 hours per day without providing the employee
12 with a second meal period of not less than 30 minutes”].)

13 35. “An on-duty meal period is permitted only when the nature of the work prevents an
14 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
15 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
16 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
17 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
18 have “found that the nature of the work exception applies: (1) where the work has some particular
19 external force that requires the employee to be on duty at all times, and (2) where the employee is the
20 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
21 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
22 to determine whether the nature of the work prevents an employee from being relieved before requiring
23 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
24 p. 946.)

25 36. Here, the Aggrieved Employees were never asked to sign any enforceable document
26 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of
27 “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5
28 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal

1 periods within the first five hours of work for the Aggrieved Employees.

2 37. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
3 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
4 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
5 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
6 to personal business.” (*Augustus v. ABM Security Services, Inc., supra*, 2 Cal.5th at p. 275.) Under
7 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
8 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
9 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
10 *Court, supra*, 53 Cal.4th at p. 1033.)

11 38. During the applicable statutory periods here, the Aggrieved Employees were
12 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to
13 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal period
14 policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal
15 periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not
16 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor
17 Code section 512 and the Applicable Wage Order by failing to advise, authorize, or permit the
18 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
19 shifts.

20 39. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
21 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
22 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
23 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
24 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
25 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
26 Regs., tit. 8, § 11070 [“If an employer fails to provide an employee a meal period in accordance with
27 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
28 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)

1 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
2 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
3 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
4 11 Cal.5th 858, 878.)

5 40. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal
6 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
7 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Aggrieved Employees
8 applicable meal period premiums for many workdays that the employees did not receive a compliant
9 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
10 Order.

11 **E. UNTIMELY WAGES DURING EMPLOYMENT**

12 41. Labor Code section 204 expressly requires employers who pay employees on a weekly,
13 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
14 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
15 Labor Code section 204 subject to a penalty of:

16 “(1) For any initial violation, one hundred dollars (\$100) for each
17 failure to pay each employee.

18 “(2) For each subsequent violation, or any willful or intentional
19 violation, two hundred dollars (\$200) for each failure to pay each
20 employee, plus 25 percent of the amount unlawfully withheld.” (Lab.
21 Code, § 210, subd. (a).)

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

25 43. Due to Defendants’ failure to pay the Aggrieved Employees the wages described above,
26 along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees
27 within seven calendar days following the close of payroll in accordance with Labor Code section 204
28 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.

1 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure
2 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

3 **F. UNTIMELY WAGES AT SEPARATION**

4 44. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
5 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
6 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
7 of Defendants’ failure to pay the Aggrieved Employees for the wages described above, along with rest
8 and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

9 45. Due to Defendants’ faulty pay policies, those Aggrieved Employees whose employment
10 with Defendants concluded were not compensated for each and every hour worked at the appropriate
11 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were certain
12 at the time of termination within at least seventy-two hours of their resignation and have failed to pay
13 those sums for thirty days thereafter.

14 46. Under Labor Code section 256, “[t]he Labor Commissioner shall impose a civil penalty
15 in an amount not exceeding 30 days pay as waiting time penalties under the terms of Section 203.”
16 (Lab. Code § 256.) This type of waiting time penalty can be recovered through PAGA because PAGA
17 allows an employee to recover civil penalties on behalf of the state against his employer for Labor
18 Code violations. (*Villacres v. ABM Industries, Inc.* (2010) 189 Cal.App.4th 562, 579 [recovery of the
19 section 256 “civil penalty falls within the PAGA”]); *Iskanian v. CLS Transportation Los Angeles, LLC*
20 (2014) 59 Cal.4th 348, 381; *Esparza v. KS Industries, L.P.* (2017) 13 Cal.App.5th 1228, 1242.)
21 Defendants have failed to pay the Aggrieved Employees’ worked wages that were due within at least
22 seventy-two hours of their separation. Thus, the Aggrieved Employees were and are entitled to waiting
23 time penalties as civil penalties under PAGA and Labor Code section 256.

24 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

25 47. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
26 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
27 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
28 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from

1 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
2 (2007) 42 Cal.4th 554, 562.)

3 48. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
4 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
5 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
6 personal representative of any right or remedy to which he is entitled under the laws of this State.”

7 49. Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses
8 they incurred during the course of their duties. The duty to reimburse even extends to the use of
9 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
10 *Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case
11 is this: Does an employer always have to reimburse an employee for the reasonable expense of the
12 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in
13 which the employee incurred an extra expense that he or she would not have otherwise incurred absent
14 the job? The answer is that reimbursement is always required. Otherwise, the employer would receive
15 a windfall because it would be passing its operating expenses on to the employee.”].)

16 50. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary
17 expenditures incurred as a direct consequence and requirement of performing their job duties, including
18 the costs associated with their personal cell phone they required to perform their work. Consequently,
19 Defendants failed to comply with Labor Code section 2802.

20 **H. WAGE STATEMENT VIOLATIONS**

21 51. Defendants also failed to provide accurate itemized wage statements in accordance with
22 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
23 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
24 statement in writing showing:

- 25 (1) The gross wages earned;
- 26 (2) The total hours worked by the employee;
- 27 (3) The number of piece-rate units earned and any applicable piece
28 rate if the employee is paid on a piece rate basis;

- 1 (4) All deductions, provided that all deductions made on written
2 orders of the employee may be aggregated and shown as one item;
3 (5) The net wages earned;
4 (6) The inclusive dates of the period for which the employee is paid;
5 (7) The name of the employee and only the last four digits of his or
6 her social security number or an employee identification number other
7 than a social security number;
8 (8) The name and address of the legal entity that is the employer; and
9 (9) All applicable hourly rates in effect during the pay period and the
10 corresponding number of hours worked at each hourly rate by the
11 employee.

12 52. Due to Defendants' failure to pay the Aggrieved Employees properly as described
13 above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours
14 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the
15 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
16 Code section 226, subdivisions (a)(1), (2), (5), and (9).

17 53. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
18 intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in
19 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing
20 the Aggrieved Employees with wage statements required by California law but nevertheless failed to
21 correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d
22 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226
23 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other
24 employees paid on commission" even though it believed that employees paid solely on commission or
25 commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

26 **V. EXHAUSTION OF REMEDIES**

27 54. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
28 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with

1 the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail to Defendants
2 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
3 (Lab. Code. §§ 2698-2699.6.)

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

9 **VI. CAUSES OF ACTION**

10 **First Cause of Action**

11 *Penalties Pursuant to PAGA for Violations of Labor Code Sections 201, 202, 203,*
12 *204, 210, 226, 226.3, 226.7, 256, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198,*
13 *1199, 2802, 2804, and Other Provisions of the California Labor Code*
14 *(Against All Defendants)*

15 56. Plaintiff realleges and incorporates by reference all previous paragraphs.

16 57. Based on the above allegations incorporated by reference, Defendants violated Labor
17 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1185, 1194, 1194.2, 1197,
18 1197.1, 1198, 1199, 2802, 2804, and others that may be applicable, and the Applicable Wage Order
19 (Cal. Code of Regs., tit. 8, § 11070), and others that may be applicable.

20 58. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
21 2698 through 2699.6 because of Defendants’ violations of Labor Code sections 201, 202, 203, 204,
22 210, 226, 226.3, 226.7, 256, 510, 512, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, 2804, and
23 others that may be applicable, and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11070),
24 and others that may be applicable.

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

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

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

2 60. Moreover, under Labor Code section 256, the Aggrieved Employees are entitled to
3 penalties “in an amount not exceeding 30 days pay as waiting time under the terms of Section 203”
4 through PAGA. (Lab. Code, §§ 256, 2699.)

5 61. These penalties must be allocated seventy-five percent to the Labor and Workforce
6 Development Agency (“LWDDA”) and twenty-five percent to the affected employees. These penalties
7 may be stacked separately for each of Defendants’ violations of the California Labor Code. (*Lopez v.*
8 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780-781 [citing with approval *Stoddart v.*
9 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
10 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
11 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
12 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
13 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
14 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
15 different Labor Code violations.”], internal quotation marks omitted.)

16 62. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
17 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
18 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants’ violations of Labor Code
19 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
20 780, 788.)

21 63. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
22 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
23 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
24 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
25 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
26 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
27 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
28 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and

1 seeks default PAGA penalties for each of Defendants' numerous violations of Labor Code section 226,
2 subdivision (e).

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

11 65. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
12 liquidated damages, in the amount of (1) one hundred dollars (\$100) for any initial violation that is
13 intentionally committed for each underpaid employee for each pay period for which the employee is
14 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
15 offense for each underpaid employee for each pay period for which the employee is underpaid
16 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
17 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
18 to Labor Code section 11971.1.

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

23 **VII. PRAYER FOR RELIEF**

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

- 26 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* all Aggrieved
27 Employees because of Defendants' violation of Labor Code § 1198; and IWC Wage
28 Orders 5-2001, 10-2001, and/or 17-2001;

2. A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for all Aggrieved Employees;
3. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;
4. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the Aggrieved Employees' claims against Defendants as provided for in Labor Code § 2699(g)(1); and
5. For such other and further relief, this Court may deem just and proper.

Dated: January 2, 2024

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Employees