

1 **LAW OFFICE OF SCOTT ERNEST WHEELER**

2 Scott Ernest Wheeler (SBN 187998)

3 Justin A. Wheeler (SBN 342226)

4 250 West First Street, Suite 216

5 Claremont, California 91711

6 Telephone: (909) 621-4988

7 Facsimile: (909) 621-4622

8 Email: sew@scottwheelerlawoffice.com

9 jaw@scottwheelerlawoffice.com

10 *Attorneys for Plaintiff and the Aggrieved Employees*

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

12/8/2023 1:38 PM

By: Eric Rowe, DEPUTY

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF SAN BERNARDINO**

13 JUAN ESCOBAR, individually, and on behalf
14 of all others similarly situated,

15 Plaintiff,

16 v.

17 LIZAMA CONSTRUCTION, a California
18 corporation; and DOES 1 through 50,
19 inclusive,

20 Defendants.

CIVSB2331929
CASE NO.

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**

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

1 This is a representative action brought by Juan Escobar, individually and on behalf of all
2 other aggrieved employees (“Plaintiff”), relating to systemic violations of California wage and hour
3 laws by her former employer, Lizama Construction (“Lizama Construction” or “Defendant”).
4 Plaintiff makes the following allegations on information and belief, except as to allegations
5 pertaining to Plaintiff individually, which are based on his personal knowledge.

6 **INTRODUCTION**

7 1. Defendant specializes in partial and complete home renovations and is located in
8 Rancho Cucamonga, California. Defendant is a private, for-profit construction business.

9 2. As a private, for-profit business, Defendant implemented common policies and
10 practices that have resulted in systemic violations of California’s wage and hour laws. Defendant
11 failed to implement adequate practices to protect the rights of its employees, particularly in light the
12 nature of its business, which is to keep labor costs low and maximize profits.

13 3. Defendant attempts to maximize profits by among other methods, understaffing
14 worksites and providing insufficient time for Plaintiff and the other aggrieved employees to
15 complete their work resulting in the inability of Plaintiff and the other aggrieved employees to take
16 meal and rest breaks.

17 4. Defendant has implemented unlawful policies with respect to meal and rest breaks.
18 Defendant also requires its non-exempt employees, who are informed that completing tasks is
19 always the top priority, to work through meal and rest breaks. Plaintiff and other non-exempt
20 employees are so busy with their work, they have been denied the ability to take the meal and rest
21 breaks that they were and are legally entitled to take. Moreover, Defendant fails to maintain any
22 records of when meal periods are taken by its non-exempt employees.

23 5. Additionally, Defendant has implemented an unlawful rounding practice, which in
24 conjunction with its strict attendance policy, results in the systematic underpayment of both regular
25 and overtime wages to Plaintiff and other non-exempt employees.

26 6. Furthermore, Defendant has uniformly failed to pay Plaintiff and other non-exempt
27 employees proper overtime wages due the fact that it willfully turns a blind eye to off-the-clock
28

1 work that Plaintiff and other non-exempt employees perform as a direct consequence of Defendant's
2 understaffing and imposition of an unreasonable workload.

3 7. Defendant also failed to provide Plaintiff and the other aggrieved employees with
4 accurate wage statements by failing to list any of the hours worked by Plaintiff and the other
5 aggrieved employees.

6 8. Plaintiff and other non-exempt employees similarly do not receive reimbursements
7 for the expenses they incur in the discharge of their job duties. These expenses include cellular
8 phone usage.

9 **JURISDICTION AND VENUE**

10 9. The Superior Court of the State of California has jurisdiction in this matter because
11 Plaintiff is a citizen and resident of the State of California, and Defendant regularly conducts
12 business in the State of California.

13 10. Venue is proper in this judicial district and the County of San Bernardino, California
14 because Plaintiff resides in the County of San Bernardino and Defendant assigned Plaintiff to work
15 at worksites located throughout the County of San Bernardino and many of Defendant's unlawful
16 actions and omissions, as set alleged herein, occurred in the County of San Bernardino.

17 11. Defendant employed Plaintiff and other aggrieved employees within the State of
18 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
19 employees.

20 **THE PARTIES**

21 12. During the statute of limitations period, Plaintiff was employed by Defendant and
22 assigned to work at worksites located throughout the County of San Bernardino, California and other
23 locations throughout the State of California.

24 13. Plaintiff is informed and believes, and thereon alleges, that Defendant is, and at all
25 times relevant hereto was, a corporation organized and existing under the laws of the State of
26 California and license to do business in the State of California.

27 14. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
28

1 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
2 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
3 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
4 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
5 DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
6 names and capacities of such DOE defendants when ascertained.

7 15. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
8 in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme,
9 business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
10 attributable to the other Defendant. Furthermore, Defendants in all respects acted as the employer
11 and/or joint employer of Plaintiff and the other aggrieved employees.

12 16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted
13 in all respects as the agent, servant, partner, joint venture, alter-ego, employee, proxy. Managing agent,
14 and/or principal of the co-Defendants, and in performing the acts mentioned below was acting, at least
15 in part, within the course and scope of that authority as such agent, proxy, servant, partner, joint
16 venture, employee, alter-ego, managing agent, and/or principal with the permission and consent of the
17 above co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally attributable to
18 the other Defendants.

19 17. As a direct and proximate result of the unlawful actions of Defendant, Plaintiff and the
20 other aggrieved employees have suffered and continue to suffer penalties in amounts as yet
21 unascertained but subject to proof at trial and within the jurisdiction of this Court.

22 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

23 18. Pursuant to the California Private Attorneys General Act of 2004 ("PAGA"),
24 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all other
25 aggrieved employees, e.g., current and former non-exempt employees of Defendant who performed
26 work for Defendant in the State of California at any time within the period beginning one (1) year
27 prior to the filing of the Complaint in this action, or as otherwise permitted under PAGA, and ending
28

1 at the time this action settles or proceeds to final judgment (“statute of limitations period”).

2 19. On September 28, 2023, Plaintiff gave written notice by certified mail pursuant to
3 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
4 (“LWDA”) and Defendant, of the specific provisions of the California Labor Code and IWC Wage
5 Order alleged to have been violated, including the facts and theories to support the alleged
6 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
7 than sixty-five (65) days from the September 28, 2023, postmark date of his written notice before
8 filing this action, Plaintiff has complied with all of the requirements set forth in California Labor
9 Code § 2699.3 to commence a representative action under PAGA.

10 **FACTUAL ALLEGATIONS**

11 **Failure to Provide Required Meal Periods**

12 **[Cal. Lab. Code §§ 226.7, 512, 558; § 10 of the Applicable IWC Wage Order]**

13 20. During the statute of limitations period, as part of Defendant’s illegal policies and
14 practices to minimize labor costs and maximize corporate profits, Defendant has required, permitted
15 or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal periods,
16 to completely skip their meal periods, to take late and short meal periods, and Defendant has
17 otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
18 required under California Labor Code §§ 226.7, 512, 558 and § 10 of the applicable IWC Order.

19 21. Defendant has implemented several practices that have caused Plaintiff and aggrieved
20 employees to systematically miss and otherwise take non-compliant meal periods. Defendant
21 systematically understaffs its worksites such that its non-exempt employees are given so much work
22 to complete that they regularly miss or take non-compliant meal periods. As a direct consequence of
23 this understaffing, Plaintiff and aggrieved employees have so much work to complete within their
24 scheduled shifts that they are forced to skip their meal periods altogether, to take them after working
25 longer than five (5) hours, to perform work during their meal periods, or return to work after taking
26 less than a thirty (30) minute meal period.

27 22. There are also frequently occasions when Plaintiff and aggrieved employees need to
28

1 perform other duties immediately before the time during which they are legally entitled to take a
2 meal period. Pursuant to Defendant's policies and practices, Plaintiff and aggrieved employees
3 cannot simply drop their urgent job duties to take a meal period. Consequently, Plaintiff and
4 aggrieved employees regularly miss meal periods, take late meal periods, or return early from meal
5 periods, and even clock out for meal periods but continue working during their meal periods.

6 23. Plaintiff and aggrieved employees often cannot simply stop working and take their
7 meal period, which often causes them to regularly miss and otherwise take non-compliant meal
8 periods.

9 24. Despite the foregoing, Defendant has implemented a policy and practice of actively
10 discouraging the issuance of meal period premium payments, and in the process, Defendant has also
11 violated California Labor Code §§ 226.7, § 10 of the applicable IWC Wage Order, and the
12 California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by failing to
13 compensate Plaintiff and aggrieved employees who were not authorized and permitted to take a
14 complete, timely, uninterrupted meal period, one additional hour of compensation at the proper
15 regular rate of pay for each workday that such a meal period was not authorized or permitted.

16 **Failure to Provide Required Rest Breaks**

17 **[Cal. Lab. Code §§ 226.7, 512; § 11 of the Applicable IWC Wage Order]**

18 25. During the statute of limitations period, as part of Defendant's illegal policies and
19 practices to minimize labor costs and maximize corporate profits, Defendant has failed to authorize
20 and permit Plaintiff and other aggrieved employees to take rest breaks as required under California
21 Labor Code §§ 226.7 and 512, and § 11 of the applicable IWC Order.

22 26. The same common policies and practices that deprive Plaintiff and other aggrieved
23 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
24 take their first, second and third rest breaks. As alleged herein, Defendant understaffs its worksites
25 which creates so much work for Plaintiff and other aggrieved employees that they are frequently
26 unable to take rest breaks.

27 27. Defendant also violated California Labor Code § 226.7, § 11 of the applicable IWC
28

1 Order, and the California Unfair Competition Law, Cal. Bus. & Prof. Code §§ 17200 *et. seq.*, by
2 failing to pay Plaintiff and other aggrieved employees who were not provided with a rest break, in
3 accordance with the applicable wage order, one additional hour of compensation at the proper
4 regular rate of pay for each workday that a rest break was not provided.

5 **Failure to Pay Overtime Wages**

6 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

7 28. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
8 Order, Defendant is required to compensate Plaintiff and other aggrieved employees for all overtime,
9 which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in
10 excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on
11 the seventh consecutive workday, with double time for all hours worked in excess of twelve (12)
12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
13 consecutive day of work in any workweek.

14 29. Plaintiff and other aggrieved employees are current and former non-exempt
15 employees entitled to the protections of California Labor Code §§ 510, 1194, and § 3 of the
16 applicable IWC Order. During the statute of limitations period, Defendant has failed to compensate
17 Plaintiff and other aggrieved employees for all overtime hours worked as required under the
18 foregoing provisions of the California Labor Code and IWC Wage Order by, among other methods:
19 failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by
20 California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring, permitting or
21 suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work through meal
22 and rest breaks, but not compensating them for this time, improperly calculating the regular rate of
23 pay based on shift differential and other remuneration, improperly rounding hours in favor of
24 Defendant so as to deprive Plaintiff and the aggrieved employees of wages, and other methods to be
25 discovered.

26 30. In a short-sighted attempt to maximize profits, Defendant understaffs its worksites.
27 Not only has this practice resulted in widespread missed meal and rest breaks, but it has also caused
28

1 Plaintiff and other aggrieved employees to perform work while off-the-clock. Defendant has actual
2 or constructive knowledge of this off-the-clock work and subtly condones it. Defendant knows that
3 Plaintiff and other aggrieved employees perform this work off-the-clock work as indicated based
4 upon Defendant's failure to list the hours worked in the wage statements of Plaintiff and the other
5 aggrieved employees.

6 31. Defendant knowingly and willfully refuses to perform its obligations to compensate
7 Plaintiff and other aggrieved employees for all wages earned and all hours worked in violation of
8 California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

9 **Failure to Pay Minimum Wages**

10 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

11 32. Pursuant to Cal. Lab. Code §§ 1194, 1197, and § 4 of the applicable IWC Wage Order,
12 payment to an employee of less than the applicable minimum wage for all hours worked in a payroll
13 period is unlawful.

14 33. During the statute of limitations period, the hourly rates for Plaintiff and other
15 aggrieved employees were precisely at California minimum wage. Based on this common practice,
16 Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked
17 by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock,
18 such as requiring them to work through meal and rest breaks but not compensating them for this time,
19 and failing to include this time in all hours worked, and other methods to be discovered.

20 34. Defendant's conduct described herein violates Cal. Lab. Code §§ 1194, 1197, and § 4
21 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations, Plaintiff
22 and other aggrieved employees have been damaged in an amount according to proof at trial. Therefore,
23 pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable law,
24 Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed to
25 them by Defendant, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

26 ///

27 ///

1 **Failure to Timely Pay Wages During Employment**

2 **[Cal. Lab. Code § 204]**

3 35. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
4 15th days of any calendar month, Defendant is required to pay its nonexempt employees between the
5 16th and 26th day of the month during which the labor was performed. California Labor Code § 204
6 also provides that for all labor performed between the 16th and 26th days of any calendar month,
7 Defendant is required to pay its non-exempt employees between the 1st and 10th day of the following
8 calendar month. In addition, California Labor Code § 204 provides that all wages earned for labor in
9 excess of the normal work period shall be paid no later than the payday of the next regular payroll
10 period.

11 36. During the statute of limitations period, Defendant has knowingly and willfully failed
12 to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the next
13 regular payroll period as required by California Labor Code § 204, including but not limited to,
14 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
15 of the regular rate of pay, and for work performed off-the-clock.

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

17 **[Cal. Lab. Code §§ 201 - 203]**

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

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

26 39. California Labor Code § 203 provides that if an employer willfully fails to pay, in
27 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
28

1 quits, the employers is liable for waiting time penalties in the form of continued compensation to the
2 employee at the same rate for up to 30 workdays.

3 40. During the statute of limitations period, Defendant has willfully failed to pay accrued
4 wages and other compensation to Plaintiff and other aggrieved employees in accordance with
5 California Labor Code §§ 201 and 202. Defendant does not have a sufficient policy to provide
6 Plaintiff and other aggrieved employees with their final paychecks within the timeframes required
7 under California law. In addition, because Defendant has failed and continues to fail to properly
8 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime
9 wages, and compensation for non-compliant meal and rest breaks, Defendant has also willfully
10 failed and continues to fail to pay accrued wages and other compensation to Plaintiff and other
11 aggrieved employees in accordance with California Labor Code §§ 201 and 202.

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

13 **[Cal. Lab. Code §§ 226(a), § 6 of the Applicable IWC Wage Order]**

14 41. 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. To the
16 extent Defendant provides wage statements, Defendant's pay stubs violate Labor Code § 226 on their
17 face by, among other things, failing to set forth all hours worked by Plaintiff and the other aggrieved
18 employees, including but not limited to, regular and overtime hours. Derivatively, Defendant is not
19 providing Plaintiff and other aggrieved employees with proper meal periods and rest breaks but
20 intentionally fails to include in their wage statements one (1) additional hour of compensation at their
21 regular rates of pay for each non-compliant meal period or rest break, and other California Labor Code
22 violations yet to be discovered.

23 42. In order to conceal its wage theft, Defendant knowingly and intentionally failed to
24 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
25 in accordance with Labor Code § 226(a) and § 6 of the applicable IWC Order.

26 43. Plaintiff and other aggrieved employees suffered injury as a result of Defendant's
27 failure to provide timely and accurate itemized wage statements prevented them from discovering the
28

1 scope and extent of Defendant's violations of California wage and hour laws, prevented them from
2 being able to determine the gross wages earned, the total hours worked, all deductions made, the net
3 wages earned, all applicable hourly rates in effect during each pay period and the corresponding
4 number of hours worked at each hourly rate, the accurate rate of pay, and other violations yet to be
5 discovered.

6 **Failure to Maintain Required Records**

7 **[Cal. Lab. Code §§ 226(a), 1174(d); § 6 of the Applicable IWC Wage Order]**

8 44. During the statute of limitations period, as part of Defendant's illegal payroll policies
9 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
10 Defendant knowingly and intentionally failed to maintain records as required under California Labor
11 Code §§ 226(a) and 1174(d) and § 6 of the applicable IWC Order, including but not limited to the
12 following records: total daily hours worked by each non-exempt employee; applicable rates of pay;
13 all deductions; meal periods; time records showing when each non-exempt employee begins and
14 ends each workday; and accurate itemized wage statements. Defendant had knowledge that it was
15 not providing its non-exempt employees with proper meal and rest periods, but knowingly failed to
16 include in the wage statements one (1) extra hour of compensation for each missed meal and rest
17 periods. Defendant also illegally and inaccurately recorded the time in which Plaintiff and other
18 aggrieved employees worked. Defendant has also failed to maintain accurate, itemized wage
19 statements, and other violations of the California Labor Code which have not been discovered.

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

21 **[Cal. Lab. Code § 2802]**

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

25 46. During the statute of limitations period, and in violation of Labor Code § 2802,
26 Defendant failed to indemnify Plaintiff and other aggrieved employees for all business expenses
27 and/or losses incurred in direct consequence of the discharge of their duties, including but not
28

1 limited to, expenses relating to clothing, shoes, work supplies or mileage reimbursement. Plaintiff
2 and other aggrieved employees were required to purchase uniform items such as protective glasses,
3 clothing and safety equipment. Defendant failed to reimburse Plaintiff and the other aggrieved
4 employees for mileage.

5 **FIRST CAUSE OF ACTION**

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

7 **[Cal. Lab. Code § 2698 *et seq.*]**

8 (On Behalf of Plaintiff against Defendant)

9 47. Plaintiff incorporates herein by specific reference, as though fully set forth, the
10 allegations in paragraphs 1 through 46.

11 48. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
12 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
13 former non-exempt employees of Defendant pursuant to the procedures specified in Labor Code §
14 2699.3, because Plaintiff was employed by Defendant and one or more of the alleged California
15 Labor Code violations was committed against Plaintiff during the statute of limitations period.

16 49. Plaintiff seeks to recover civil penalties through a representative action permitted by
17 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
18 class certification is not required.

19 50. A plaintiff has standing to represent all aggrieved employees for all of her asserted
20 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA,*
21 *Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been employed
22 by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699, subds. (a), (c).)).
23 Here, Plaintiff was not provided with a legally compliant wage statement pursuant to Labor Code
24 §226 since Defendant failed to list the hours worked on its wage statements provided to Plaintiff, in
25 addition to the meal and rest period violations and other California Labor Code violations as alleged
26 herein.

27 51. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
28

1 penalties from Defendant in a representative action for the violations set forth above, including but
2 not limited to violations of California Labor Code §§ 201, 202, 203, 226(a), 226.7, 2510, 558, 512,
3 1174(d), 1194, 1197, and 1198.

4 52. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
5 for Defendant's violations of California Labor Code provisions for which a civil penalty is
6 specifically provided, including but not limited to, the following:

- 7 a. Pursuant to California Labor Code § 210, for violations of California Labor
8 Code § 204, Defendant is subject to a civil penalty in the amount of one
9 hundred dollars (\$100) for the initial violation for each failure to pay each
10 employee, and two hundred dollars (\$200) per employee for violations in
11 subsequent pay periods.
- 12 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
13 Code § 226(a), Defendant is subject to a civil penalty in the amount of two
14 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
15 period where a violation occurs and one thousand dollars (\$1,000) per
16 aggrieved employee for violations in subsequent pay periods.
- 17 c. Pursuant to California Labor Code § 558(a), "[a]ny employer or other person
18 acting on behalf of an employer who violates, or causes to be violated, a
19 section of this chapter or any provision regulating hours and days of work in
20 any order of the Industrial Welfare Commission," including California Labor
21 Code §§ 510 and 512, shall be subject to a civil penalty, in addition to any
22 other penalty provided by law, of fifty dollars (\$50) for initial violations for
23 each underpaid employee for each pay period for which the employee was
24 underpaid and one hundred dollars (\$100) for each subsequent violation for
25 each underpaid employee for each pay period for which the employee was
26 underpaid.
- 27 d. Pursuant to California Labor Code § 1174.5, for violations of California Labor
28

Code § 1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

- e. Pursuant to California Labor Code § 1197.1, an employers who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

53. California Labor Code § 2699(f) provides that for all California Labor Code violations for which a civil penalty is not specifically provided, the following civil penalties are established: 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.

54. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f) for Defendant's violations of California Labor Code provisions for which a civil penalty is not specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226.7, 558, 1194, 1197, and 1198.

55. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief against Defendant, as follows:

1. For civil penalties according to proof;
2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),

1 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
2 attorneys' fees and costs; and

3 3. For such further relief that the Court may deem just and proper.

4 DATED: December 8, 2023

THE LAW OFFICE OF SCOTT ERNEST WHEELER

5
6 By: 

SCOTT ERNEST WHEELER
JUSTIN A. WHEELER

7
8 *Attorneys for Plaintiff and the other Aggrieved*
9 *Employees*