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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Raquel Enriquez, Deputy
\$435 PAID

Attorneys for Plaintiff ANGELICA DE ANDA, as representative of the State of California and the Labor and Workforce Development Agency, and on behalf of herself and Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF STANISLAUS COUNTY**

ANGELICA DE ANDA, on behalf of herself
and all other Aggrieved Employees,

Plaintiff,

v.

BRONCO WINE COMPANY, a California
Corporation; and DOES 1- 50, Inclusive,

Defendant,

Case No. CV-23-007014

COMPLAINT

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

This case has been assigned to Judge Freeland, John D,
Dept. 23
Department _____, for all purposes including Trial.

1 Plaintiff, ANGELICA DE ANDA, (“Plaintiff”), as a representative of the State of
2 California and the Labor and Workforce Development Agency (LWDA), and on behalf of herself
3 and other current or former Aggrieved Employees, complains and alleges as follows:

4 **INTRODUCTION**

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

8 2. Defendant and employer Bronco Wine Company (“Defendant”), violated
9 numerous wage and hour laws with respect to Plaintiff and other Aggrieved Employees by failing
10 to provide, for example: accurate and itemized wages statements, payment for all hours worked
11 (including regular wages and overtime), failure to provide a minimum wage, lawful meal
12 periods, lawful rest periods, timely payment during employment, failure to reimburse for
13 expenses incurred during the course and scope of employment, and payment upon separation of
14 employment.

15 **PARTIES**

16 **The Plaintiff**

17 3. Plaintiff is, and at all times herein mentioned was, a resident of California,
18 currently residing in Stanislaus County.

19 4. Aggrieved Employees are all former and/or current non-exempt employees
20 holding various positions and employed by Defendant within California during the relevant time
21 period who were subject to at least one or more Labor Code violations set forth in the PAGA
22 Notice dated September 18, 2023 and attached hereto as **Exhibit A** (“Aggrieved Employees”).

23 **The Defendants**

24 5. Defendant Bronco Wine Company is a California corporation which, at all
25 relevant times mentioned herein, existing, doing business and employing individuals in the
26 County of Stanislaus, State of California. Plaintiff is informed and thereon alleges that Defendant
27 exercised control over Plaintiff and Aggrieved Employees’ wages, hours, and working conditions.

28 6. The true names and capacities, whether individual, corporate, associate, or

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

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

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

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

JURISDICTION AND VENUE

10. Venue is proper in Stanislaus County, because Defendant maintains its locations

1 and transacts business in this county, the obligations and liability primarily arise in this county,
2 and work was primarily performed by Plaintiff and other Aggrieved Employees in this county.

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

10 **GENERAL ALLEGATIONS**

11 12. Defendant is in the business of producing wine. Defendant employed Plaintiff
12 and Aggrieved Employees in California during the relevant PAGA period. Aggrieved Employees
13 are all former and/or current non-exempt employees holding various positions and employed by
14 Defendant within California during the relevant time period who were subject to at least one or
15 more Labor Code violations set forth in the PAGA Notice dated September 18, 2023 and attached
16 hereto as **Exhibit A**

17 13. Plaintiff was employed by Defendant as an “Accounting Supervisor” from about
18 July 2022 to approximately July 19, 2023. Plaintiff’s primary duties included general accounting
19 functions, reconciling and accumulating data for financial reports. Plaintiff’s primary job duties
20 did not involve judgment or discretion or substantive supervision of her co-workers.

21 14. The position required Plaintiff to work more than 8 hours a day and/or 40 hours
22 per week without lawful compensation. Plaintiff and Aggrieved Employees were regularly not
23 paid for minimum wages and overtime for compensable work time spent under the control of
24 Defendant, including off-the-clock work which was in excess of regularly scheduled, eight-hour
25 daily shifts.

26 15. Plaintiff and Aggrieved Employees were subject to not having all their
27 compensable work time recorded due to Defendant’s lack of adequate staffing. Not all of Plaintiff
28

1 and Aggrieved Employees' compensable work time spent under the control of Defendant was
2 accounted for and compensated. Specifically, Plaintiff is informed and believes that Defendant
3 (1) adjusted clock in and clock out times to the disadvantage of Plaintiff and other Aggrieved
4 Employees by rounding up clock-in times when Plaintiff and Aggrieved Employees clocked-in
5 before the scheduled start of their respective shifts and rounded down clock-out times when
6 Plaintiff and Aggrieved Employees worked past the scheduled end time for their shifts, as well
7 as (2) requiring Plaintiff and Aggrieved Employees to continue working when ostensibly on
8 duty-free meal periods, or requiring them to return to work before the end of their thirty-minute
9 meal periods but prohibiting them from clocking back in until the legally required thirty-minute
10 mark.

11
12 16. Based on information and belief, Plaintiff believes she and Aggrieved Employees
13 were also not being reimbursed for all necessary expenses incurred in the performance of their
14 job duties. Specifically, Defendant required Plaintiff and Aggrieved Employees, regardless of
15 classification, to use their personal cellular telephones to communicate with colleagues and
16 supervisors in the course of performing their respective duties but failed to reimburse them for
17 use of the personal cellular devices nor the consumption of personal calling or home internet
18 data plans. Specifically, Plaintiff often worked from home on behalf of Defendant without
19 compensation for the use of her internet data.

20 17. Defendant failed to authorize and permit all required meal and rest periods for
21 Plaintiff and Aggrieved Employees because, upon information and belief, Defendant maintained
22 unlawful meal/rest period policies and practices. In order to curtail labor costs, Defendant
23 regularly did not staff enough employees to provide sufficient coverage to maintain their
24 business operations so Plaintiff and Aggrieved Employees could not both complete their
25 assigned daily duties and take complete, timely and uninterrupted meal and rest breaks.
26 Defendant prioritized completion of daily duties and customer satisfaction ahead of meal and
27 rest period compliance. Defendant failed to provide Plaintiff and Aggrieved Employees with an
28 additional hour of premium pay at the regular rate of pay for each meal/rest period violation, as

1 required by Labor Code section 226.7.

2 18. As a result of the violations described above, Plaintiff and Aggrieved Employees
3 experienced collateral or derivative violations. Specifically, Defendant failed to provide Plaintiff
4 and Aggrieved Employees accurate itemized wage statements in writing in compliance with
5 Labor Code section 226 and failed to compensate Plaintiff and Aggrieved Employees for all
6 wages owed at the time employment with Defendant had ended.

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

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

18 21. Defendant's conduct during the PAGA period with respect to Plaintiff and
19 Aggrieved Employees violates numerous Labor Code sections as detailed herein.

20 22. Plaintiff alleges that Defendant has engaged in a systematic pattern of wage and
21 hour violations under the California Labor Code and IWC Wage Orders.

22 23. At all relevant times herein, Defendant employed Plaintiff and Aggrieved
23 Employees who were subject to the employment policies described herein, in whole or in part,
24 and therefore suffered at least one or more of the violations set forth herein.

25 24. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
26 or should have known that Plaintiff and Aggrieved Employees were entitled to receive wages
27 for all hours worked, including the applicable minimum, regular, and overtime wages, and that
28

1 they were not receiving all wages earned for work that was required to be performed. In violation
2 of the Labor Code and IWC Wage Orders, Defendant failed to pay Plaintiff and Aggrieved
3 Employees for all hours worked. Accordingly, Defendant failed to pay Plaintiff and Aggrieved
4 Employees all earned minimum, regular, and/or overtime compensation.

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

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

27 27. Plaintiff is informed and believes, and based thereon alleges, that Defendant knew
28 or should have known that Plaintiff and certain Aggrieved Employees were entitled to timely

1 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
2 and certain Aggrieved Employees did not receive payment of all wages due, within permissible
3 time periods, upon separation of employment.

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

15 29. Plaintiff is informed and believes, and thereon alleges, that Defendant knew or
16 should have known that Defendant was required to maintain accurate records of the hours
17 worked by Plaintiff and Aggrieved Employees. In violation of the Labor Code, Defendant failed
18 to maintain accurate records of hours worked by Plaintiff and Aggrieved Employees due to its
19 off-the-clock and/or unfair rounding practices, among other things.

20 **FIRST CAUSE OF ACTION**

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

23 30. Plaintiff realleges and incorporates by reference the preceding paragraphs of this
24 Complaint as if fully alleged herein.

25 31. By this complaint, Plaintiff brings this case as a representative action seeking
26 penalties for himself, the Aggrieved Employees, and the State of California in a representative
27 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an Aggrieved
28 Employee who was employed by Defendant and subject to at least one of the Labor Code

1 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
2 their notice to the LWDA and Defendants: violation of Labor Code sections 201, 202, 203, 204,
3 226, 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and
4 2802.

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

9 33. Prior to filing this complaint, on September 18, 2023, Plaintiff gave written notice
10 of the specific provisions alleged to have been violated, including the facts and theories to
11 support the alleged violations, as required by Labor Code section 2699.3 to Defendant Bronco
12 Wine Company. The written notice was given via certified mail to Defendant, and the LWDA
13 by electronically filing the notice via the Department of Industrial Relations website. Plaintiff
14 was given an LWDA case number of LWDA-CM- 982293-23. True and correct copies of
15 Plaintiff's notices to the LWDA and Defendant are attached hereto as **Exhibit A**.

16 34. The LWDA has not provided Plaintiff with any notice that it intends to investigate
17 the violations as alleged in Plaintiff's notices, and more than 65 calendar days have elapsed since
18 the postmark date on the latter notice.

19 35. California Labor Code §§2698-2699.5, in relevant part provides, "any provision
20 of this code that provides for a civil penalty to be assessed and collected by the Labor and
21 Workforce Development Agency...for a violation of this code, may, as an alternative, be
22 recovered through a civil action brought by an Aggrieved Employee on behalf of himself or
23 herself and other current or former employees pursuant to the procedures specified in Section
24 2699.3."

25 36. As an Aggrieved Employee, Plaintiff brings this civil action to recover civil
26 penalties for Defendant's Labor Code violations.
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28

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1 **First Violation**

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

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

8 38. Defendant violated Labor Code § 512 by failing to provide Plaintiff and
9 Aggrieved Employees who worked shifts of greater than five hours, uninterrupted and/or timely
10 meal periods within the first five hours of the shifts worked. Defendant failed to pay Plaintiff
11 one hour’s pay at Plaintiff’s regular rate of pay for each day Defendant failed to provide a meal
12 period in compliance with section 512.

13 **Second Violation**

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

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

18 40. Industrial Welfare Commission (IWC) provides, “Every employer shall authorize
19 and permit all employees to take rest periods, which insofar as practicable shall be in the middle
20 of each work period. The authorized rest period time shall be based on the total hours worked
21 daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

22 41. Defendant failed to authorize and permit Plaintiff and Aggrieved Employees to
23 take rest periods and mandated by the Wage Order.

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

27 43. Defendant failed to pay Plaintiff and Aggrieved Employees who were not
28

provided rest periods one hour of pay at their regular rate of pay.

Third Violation

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

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

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

Fourth Violation

(Failure to Pay Overtime Wages)

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

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

Fifth Violation

(Failure to Pay Minimum Wages)

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

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

Sixth Violation

(Failure to Timely Pay Wages During Employment)

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

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

Seventh Violation

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

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

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

1 **Eighth Violation**

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

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

4 54. Labor Code § 2802 provides that an employer shall indemnify his or her
5 employee for all necessary expenditures or losses incurred by the employee in direct
6 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
7 the employer.

8 55. Defendants failed to indemnify and reimburse Plaintiff for all necessary
9 expenditures or losses incurred by Plaintiff in direct consequence of the discharge of Plaintiff's
10 job duties.

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

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

16 **PRAYER FOR RELIEF**

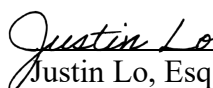
17 **WHEREFORE**, Plaintiff prays for the following relief:

- 18 1. For penalties in an amount according to proof;
19 2. For reasonable attorney's fees and costs pursuant to PAGA; and
20 3. For such other and further relief as this Court may deem just and proper.
21

22 Respectfully Submitted,

23 Dated: November 29, 2023

WORK LAWYERS PC

24
25
26 

Justin Lo, Esq.

27 Attorney for Plaintiff ANGELICA DE ANDA and
28 Aggrieved Employees

EXHIBIT A



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

DATE September 18, 2023

DELIVERY Online Filing and Certified U.S. Mail

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

SUBJECT: Angelica De Anda v. Bronco Wine Company.; ET AL — NOTICE OF LABOR CODE VIOLATIONS UNDER CAL. LABOR CODE §2699.3

Dear Representative:

The office represents Angelica De Anda (“Ms. De Anda”) with respect to her claims against Bronco Wine Company., for violations of the California Labor Code and IWC Wage Orders. This letter is being sent simultaneously to Employers by certified mail. The above-named Employers are joint employers as they engaged Ms. De Anda and Aggrieved Employees as there was sufficient control over wages and working conditions, whether directly or indirectly. Employers are a corporation doing business in the State of California. Employer employed Ms. De Anda from approximately July 2022 to approximately July 19, 2023, as a non-exempt/hourly employee. During her employment with Employers, Ms. De Anda was employed as an “Accounting Supervisor” at Employers’ business located at 6342 Bystrum Rd Ceres, CA 95307. Employer is a company that produces wine.

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

As detailed below, Employers violated several of California’s wage and hour laws during Ms. De Anda employment, including but not limited to violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 227.3, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the Industrial Welfare Commission Wage Orders (“IWC Wage Order”) including inter alia, IWC Wage Order No. 5. The claims made on behalf of Ms. De Anda and Aggrieved Employees are based upon the following facts and theories:



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

Employers have engaged in numerous unlawful practices which resulted in the failure to pay Ms. De Anda and Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Ms. De Anda and Aggrieved Employees also did not receive the correct rate of premium pay due to a “royalty” payment that was not included in the calculation of their regular rate of pay. This incorrect regular rate of pay resulted in incorrect premiums being paid and deficient wage statements.

Preliminary investigation shows that Ms. De Anda and other employees are likely classified as an exempt employee although they should have been treated as non-exempt employees. This incorrect classification has resulted in the following violations occurring as described in the rest of this violation notice.

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

Employers also failed to accurately record the actual time worked by Ms. De Anda and Aggrieved Employees since their hours were imputed by their supervisor not by them using any equipment to track their own hours. In addition to requiring Ms. De Anda and Aggrieved Employees to perform work off-the-clock without compensation, Employers also failed to accurately record the actual time worked by Ms. De Anda and Aggrieved Employees, which resulted in a failure to pay Ms. De Anda and Aggrieved Employees for all hours worked, including minimum wages, straight time wages and overtime wages. Finally, and as a matter of policy and/or practice, Employers failed to pay overtime to Ms. De Anda and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration. Ms. De Anda and Aggrieved Employees also receive non-discretionary bonus pay that was not factored into Aggrieved Employees’ regular rate of pay.

As a result of the foregoing practices, Employers have failed to pay Ms. De Anda and Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight



time wages, and overtime compensation. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 204, 510, 1194, 1197, 1197.1 and 1198.

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

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

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

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



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

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

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

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

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

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



other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

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

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

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

4. FAILURE TO TIMELY PAY WAGES DURING EMPLOYMENT.

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

In addition, Ms. De Anda and Aggrieved Employees were not paid the correct wages as an unlawful deduction was made in the form of an "APPAREL" and "Uniform Rental Fee" deduction.

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

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

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

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



6. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS.

As a result of the practices described above, the wage statements provided to Ms. De Anda and Aggrieved Employees never included the actual hours worked, the name and address of the legal employing entity, and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

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

7. FAILURE TO MAINTAIN ACCURATE RECORDS.

Employers have failed to maintain accurate records relating to Ms. De Anda and Aggrieved Employees' work periods, meal periods, total daily hours worked, and total hours worked per payroll period. Accordingly, Employers violated IWC Wage Order No. 5 and California Labor Code sections 1198.5 and 1174(d). As a result of Employers illegal and detrimental time rounding policy, Ms. De Anda and Aggrieved Employees compensable work time was improperly recorded depriving them of all their earned compensable work time.

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

8. FAILURE TO REIMBURSE NECESSARY EXPENDITURES.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of her or her job duties or in direct consequence of his or her obedience to the directions of the employer. IWC Wage Order No. 5 requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Ms. De Anda and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the use of Ms. De Anda and Aggrieved Employees of their personal cell phone to send and receive messages from clients, email correspondence and calls with supervisors to understand their duties and the scope of work. Ms. De Anda and Aggrieved Employees also had to pay for and/or rent their uniforms and other apparel as part of their duties. These wage deductions are taken directly out of their wage statements and listed as "APPAREL" and "Uniform Rental Fee".

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



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

9. FAILURE TO PAY VACATION TIME.

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

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

Sincerely,

Justin Lo
JUSTIN LO ESQ.

Notice provided to Employers via Certified Mail

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