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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ

ROSA CALDERAS individually, and on
behalf of all others similarly situated,

Plaintiff,

vs.

SEASCAPE RESORT LTD, a California
Limited Partnership; and DOES 1 through
50, inclusive,

Defendants.

Case No. 24CV00084

**COMPLAINT FOR RECOVERY OF CIVIL
PENALTIES PURSUANT TO THE PRIVATE
ATTORNEYS GENERAL ACT**

1. **PAGA Civil Penalties for Failure to Pay Wages For All Hours Worked (Cal. Lab. Code §§ 204, 218, 1194, 1194.2);**
2. **PAGA Civil Penalties for Failure to Pay Overtime Wages (Cal. Lab. Code §§ 204, 210, 218, 510, 1194);**
3. **PAGA Civil Penalties for Failure to Provide Timely and Compliant Meal Periods and Rest Breaks (Cal. Lab. Code §§ 226.7 and 512)**
4. **PAGA Civil Penalties for Failure to Provide Accurate Wage Statements (Cal. Lab. Code §§ 226, 1174, 1174.5); and**
PAGA Civil Penalties for Waiting Time

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
1/8/2024 3:49 PM
Clerk of the Court by Deputy,
Karen Broughton



1 1. Plaintiff ROSA CALDERAS (“Plaintiff”), all aggrieved employees, files this
2 PAGA Complaint against Defendants SEASCAPE RESORT LTD and DOES 1 through 50
3 (collectively, “Defendants”), and allege as follows:

4
5 **I. INTRODUCTION AND FACTUAL BACKGROUND**

6 2. Plaintiff brings this action pursuant to PAGA for, among other things: (a)
7 nonpayment of wages (including minimum wage and overtime wages); (b) non-complaint meal
8 periods and rest breaks; (c) failure to provide accurate wage statements; and (d) for failure to
9 pay all wages due upon termination of employment.

10 3. On September 11, 2023, Plaintiff provided written notice by certified mail to
11 the LWDA and to Defendants of the specific provisions of the California Labor Code alleged
12 to have been violated, including the facts and theories to support the alleged violations.

13 4. During the PAGA Period starting one year and 65 days prior to the filing of this
14 Complaint (plus any tolling) and continuing through trial (“PAGA Period”), Defendants have and
15 continue to employ non-exempt hourly employees.

16 5. Plaintiff seeks to recover civil penalties for all non-exempt employees who worked
17 for Defendant in California during the PAGA Period who incurred wage and hour violations and
18 losses as hereinafter described. (“Aggrieved Employees”)

19 6. Labor Code § 1198 provides: “The maximum hours of work and the standard
20 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
21 conditions of labor for employees. The employment of any employee for longer hours than those
22 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

23 7. In accordance with its power under section 1198, the Industrial Welfare
24 Commission adopted Wage Orders prescribing the minimum wages, maximum hours, and standard
25 conditions of employment for employees in this state.

26 8. Plaintiff and Aggrieved Employees were regularly not provided with all
27 compliant meal periods to which they were entitled, including for a second meal period. This
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1 includes that Defendants required Plaintiff and Aggrieved Employees to regularly work through
2 meal periods. This resulted in interrupted meal periods that were not sufficiently long to
3 comply with the law or a complete lack of a meal period, but no compliant meal period
4 premiums were paid. Defendants were well aware of this, but Plaintiff and Aggrieved
5 Employees still had 30 minutes deducted from their daily time for each meal period, despite
6 the fact that they were working for part of or all of their meal period and meal period premiums
7 were not paid. The same happened for second meal periods. Based on the hours worked, the
8 time spent working during meal periods (for which they were not paid) would be overtime
9 hours, and result in not only overtime wages owed but also minimum wage and liquidated
10 damages.

11 9. Furthermore, meal periods (including second meal periods) were regularly
12 untimely or not taken at all, including because of the press of business and pressure of
13 Defendants to complete tasks. Again, compliant meal period premiums were not paid.

14 10. Additionally, Defendants' non-exempt employees were not authorized and
15 permitted lawful rest breaks as required. Plaintiff and Aggrieved Employees were not
16 permitted or authorized to take these, and in fact did not take them, due to, among other things,
17 the press of business and Defendants' requirements. Defendant was aware of this but did not
18 pay Plaintiff and Aggrieved Employees a complaint rest break premium.

19 11. As such, Plaintiff and Aggrieved Employees were not authorized and permitted
20 lawful meal periods and rest breaks and were not provided with one hour's wages in lieu thereof in
21 violation of, among others, California Labor Code §§ 512 and 226.7 and applicable IWC Wage
22 Orders. This has also resulted in a failure to pay for all wages for hours worked during meal
23 periods. The wages include regular time wages, overtime, and minimum wages (with its
24 resulting liquidated damages).

25 12. Defendants' non-exempt employees were not authorized and permitted lawful meal
26 periods and rest breaks and were not provided with one hour's wages in lieu thereof, in one or more
27 of the following manners.
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- a. employees were regularly not authorized and permitted full and timely thirty-minute meal periods for workdays in excess of five and/or ten hours and were not compensated one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7, 512, and applicable IWC Wage Orders;
- b. employees were regularly not authorized and permitted full and timely ten-minute rest breaks for workdays in excess of four and/or eight and/or twelve hours and were not compensated one hour's wages in lieu thereof, all in violation of, among others, Labor Code §§ 226.7 and applicable IWC Wage Orders;
- c. employees were required to work through their daily meal period(s) and rest break(s);
- d. employees were required to work longer than five hours before being allowed to take a meal period;
- e. employees were required to work longer than four hours before being allowed to take a rest period;
- f. employees were required to work off the clock to avoid triggering second meal periods and were not provided those second meal periods; and
- g. employees were severely restricted in their ability to take a meal period or rest break.

13. During the relevant time period, Defendants did not authorize and permit lawful meal periods and rest breaks for Plaintiff and Aggrieved Employees. This was based on policies (or lack thereof) as well as their practices that applied to all Aggrieved Employees.

14. On information and belief, Plaintiff alleges that she and the Aggrieved Employees did not waive meal periods during the PAGA period.

15. As addressed above, during the course of Plaintiff's and Aggrieved Employees' employment, Defendants also required Aggrieved Employees to work through all or part of their meal periods. This is separate from the fact that Plaintiff and Aggrieved Employees were required to perform work off the clock before and after their shifts. These additional hours

1 would have included overtime hours.

2 16. Despite working overtime hours, Defendants did not pay Plaintiff and
3 Aggrieved Employees for all of those hours, including as noted above. They were not paid all
4 wages, or wages at the proper rate, for this time as required by Labor Code §§ 510 and 1194 in
5 one or more of the following manners:

- 6 a. By failing to pay for all hours worked;
7 b. By failing to pay for all hours worked at the appropriate rate;
8 c. By deducting time for meal periods during which employees were actually
9 working;
10 d. By arbitrarily reducing hours worked;
11 e. Through failure to maintain proper records; and
12 f. Through other methods to be discovered.

13 17. As a result of Defendants' illegal and unlawful conduct as set forth above,
14 Defendants have knowingly and intentionally failed to comply with the itemized wage-statement
15 provisions and have failed to pay the damages and penalties for said violations as required by
16 California law, including the failure to include gross and net wages earned, total hours worked and
17 the applicable rate of pay, meal period and rest break premiums (including at the correct rate). They
18 also failed to record hours and meal periods and maintain accurate payroll in violation of California
19 Labor Code §§ 226 and 1198, as well as the Industrial Wage Order.

20 18. Furthermore, Defendants failed to timely pay for all wages owed to Aggrieved
21 Employees upon termination of employment. As detailed above, Aggrieved Employees were
22 not provided proper meal periods and/or rest breaks and were not provided with a one hour
23 penalty in lieu thereof, and were not paid all wages owed.

24 19. Plaintiff, on behalf of herself and the non-exempt employees, bring this action
25 pursuant to California Labor Code including §§ 201-203, 204, 210, 218, 226, 226.7, 510, 512,
26 558, 558.1, 1174, 1194, 1194.2, 1197, 1197.1, and 1198, and the applicable Industrial Welfare
27 Commission Wage Orders ("Wage Orders"), seeking unpaid wages (including minimum,
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1 regular and overtime wages), unpaid meal period and rest break premiums (including at the
2 correct rate), penalties, injunctive and other equitable relief, and reasonable attorneys' fees and
3 costs.

4 20. Plaintiff, on behalf of herself and the non-exempt employees, pursuant to Business
5 & Professions Code §§ 17200, *et seq.*, also seeks injunctive relief, and restitution, from Defendants
6 for their failure to pay the wages and penalties as set forth above.

7 **II. THE PARTIES**

8 **A. The Plaintiff**

9 21. Plaintiff is a current resident of Santa Cruz County. She has been employed as a
10 housekeeper for Defendants for over 5 years. She will serve as an adequate, typical and active
11 participant and representative.

12 22. As detailed above, Plaintiff was not paid for all hours worked (including for
13 overtime), was not provided all complaint meal periods and were not authorized and permitted all
14 and rest breaks during the PAGA Period.

15 23. Plaintiff reserves the right to seek leave to amend this complaint to add new
16 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
17 *American Savings and Loan Association*, 5 Cal. 3d 864, 872 (1971), and other applicable law.

18 **B. The Defendants**

19 24. SEASCAPE RESORT LTD is a resort in Aptos, California.

20 25. Defendants employed Plaintiff and other non-exempt employees in California. The
21 illegal and unlawful policies and practices described herein were performed by Defendants in
22 California.

23 26. Defendant SEASCAPE RESORT LTD was and is, upon information and belief,
24 a California Limited Partnership with the capacity to sue and to be sued, and doing business,
25 in the State of California, and doing business in this county. At all times hereinafter mentioned,
26 Defendant SEASCAPE RESORT LTD was an employer whose employees were engaged
27 throughout this county and the State of California.
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1 27. The true names and capacities, whether individual, corporate, associate or
2 otherwise, of defendants DOES 1 through 50 are unknown to Plaintiff, who therefore sues these
3 defendants by fictitious names pursuant to Code of Civil Procedure § 474. Plaintiff further alleges
4 that each of these fictitious defendants is in some manner responsible for the acts and occurrences
5 herein set forth. Plaintiff will amend this Complaint to show these defendants' true names and
6 capacities when ascertained, as well as the manner in which each fictitious defendant is responsible.

7 28. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
8 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
9 of, and/or injured Plaintiff and aggrieved employees in the State of California.

10 29. At all times mentioned herein, each Defendant was the agent, servant, or
11 employee of the other Defendants and in acting and omitting to act as alleged herein did so
12 within the course and scope of that agency or employment.

13 **III. JURISDICTION AND VENUE**

14 30. The unlawful acts alleged herein arise under the laws of the State of California
15 and have a direct effect on Plaintiff and other employees who work and/or performed work
16 within the State of California.

17 31. The relief sought by Plaintiff on behalf of all Aggrieved Employees below
18 exceeds the minimal jurisdictional limits of the Superior Court and will be established
19 according to proof at trial. The Santa Cruz County Superior Court has personal jurisdiction
20 over Defendants because: (1) they operate within this County; (2) are qualified with the
21 California Secretary of State to do business and is doing business in California, and in this
22 County; and (3) because many of the acts complained of occurred and arose in California, and
23 specifically, this County. Additionally, each is either a citizen of California, has sufficient
24 minimum contacts in California, or otherwise intentionally avails itself of the California market so
25 as to render the exercise of jurisdiction over it by the California courts consistent with traditional
26 notions of fair play and substantial justice.
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1 32. Based on information and belief, Plaintiff alleges that this entire action arises
2 solely under the laws of the State of California and applicable regulations of the health, safety
3 and wages of the employees residing in the State of California. Plaintiff alleges, on information
4 and belief, that no federal question is raised. Moreover, PAGA civil penalty actions are not
5 subject to federal jurisdiction.

6 33. Venue as to Defendants is proper in this judicial district, pursuant to Code of
7 Civil Procedure § 395, as one or more of the named Defendants reside, transact business, or
8 have offices in this county and the acts and omissions alleged herein took place in this county.

9 34. California Labor Code sections 2699 et seq., (the “PAGA”), authorizes aggrieved
10 employees to sue directly for various civil penalties under the California Labor Code.

11 35. Plaintiff timely provided notice to the California Labor Workforce Development
12 Agency (“LWDA”) and to Defendants, pursuant to California Labor Code section
13 2699.3(a). Therefore, he may proceed with this action for penalties pursuant to California Labor
14 Code § 2699, et seq.

15 36. Pursuant to PAGA, Plaintiff has given notice to the LWDA of the Labor Code
16 violations alleged in this Complaint. The Complaint seeks all recoverable penalties for Labor
17 Code violations as permitted and proscribed by the PAGA. This cause of action includes
18 allegations and remedies available under Labor Code §§ 2699, 2699.5, and 2933.3, among
19 others. *See* Cal. Labor Code § 2933.3(a)(2)(C) (“Notwithstanding any other provisions of law,
20 a plaintiff may as a matter of right amend an existing complaint to add a cause of action arising
21 under this part within 65 days of the time periods specified in this part.”)

22 37. PAGA permits Plaintiff to recover civil penalties for the violation(s) of the
23 Labor Code sections enumerated in Labor Code § 2699.5.

24 38. At all times herein set forth, PAGA was applicable to Plaintiff’s employment
25 by Defendants.

26 39. At all times herein set forth, PAGA provides that any provision of law under the
27 California Labor Code that provides for a civil penalty to be assessed and collected by the
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1 LWDA for violations of the California Labor Code may, as an alternative, be recovered through
2 a civil action brought by an aggrieved employee on behalf of himself and other current or
3 former employees pursuant to procedures outlined in California Labor Code § 2699.3.

4 40. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
5 employee,” who is any person that was employed by the alleged violator and against whom one
6 or more of the alleged violations was committed.

7 41. Plaintiff and Aggrieved Employees as defined by California Labor Code §
8 2699(c) in that they are all current or former employees of Defendants who are or were
9 employed by Defendants, and one or more of the alleged violations were committed against
10 them.

11 42. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved
12 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
13 requirements have been met:

- 14 a. The aggrieved employee shall give written notice (“Employee’s Notice”) to the
15 LWDA and by certified mail to the employer of the specific provisions of the
16 California Labor Code alleged to have been violated, including the facts and theories
17 to support the alleged violations.
18
19 b. The LWDA shall provide notice (“LWDA Notice”) to the employer and the
20 aggrieved employee by certified mail that it does not intend to investigate the alleged
21 violation within sixty (60) calendar days of the postmark date of the Employee’s
22 Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is not provided
23 within sixty-five (65) calendar days of the postmark date of the Employee’s Notice,
24 the aggrieved employee may commence a civil action pursuant to California Labor
25 Code § 2699 to recover civil penalties in addition to any other penalties to which the
26 employee may be entitled.

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1 43. Plaintiff has satisfied the administrative prerequisites under California Labor
2 Code § 2699.3(a) to recover civil penalties against Defendants, in addition to other remedies,
3 for violations of California Labor Code including sections 201-203, 204, 210, 218, 226, 226.3,
4 226.7 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, and 1198, and Industrial Welfare
5 Orders including, but not limited to, Section 7.

6 44. Defendants' conduct, as alleged herein, violates numerous sections of the
7 California Labor Code including but not limited to the following:

- 8 a. Violation of Labor Code § 226(a) and 226.3 for failing to provide accurate wage
9 statements, as herein alleged.
- 10 b. Violation of Labor Code §§ 201, 202 and 203 for failure to timely pay all wages
11 owed upon termination, as herein alleged.
- 12 c. Violation of Labor Code § § 204, 210 and 558 for failing to pay all wages owed,
13 as herein alleged.
- 14 d. Violation of Labor Code § 510 for failing to pay all overtime wages, as herein
15 alleged.
- 16 e. Violation of Labor Code §§ 558, 1194, 1194.2, 1197 and 1197.1 for failing to
17 pay minimum wage.
- 18 f. Violation of Labor Code § § 226.7 and 512 for failing to provide compliant meal
19 periods and authorize and permit compliant rest breaks.
- 20 g. Violation of Labor Code § 1174, 1198 and Industrial Welfare Orders including,
21 but not limited to, Section 7, for failure to maintain records.
- 22 h. Violation of Labor Code §1198 for failure to comply with standard conditions
23 of labor.
- 24 i. Violation of Labor Code §558.1.

25 45. Pursuant to California Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff and
26 all other aggrieved employees are entitled to recover civil penalties against Defendants, in
27 addition to other remedies, for violations of California Labor Code sections 201-203, 204, 210,
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1 218, 226, 226.3, 226.7 510, 512, 558, 558.1, 1194, 1194.2, 1197, 1197.1, and 1198, and
2 Industrial Welfare Orders including, but not limited to, Section 7.

3 46. Further Plaintiff is entitled to seek and recover reasonable attorneys' fees and
4 costs pursuant to California Labor Code § 2699 and any other applicable statute.

5 **IV. CAUSES OF ACTION**

6 **FIRST CAUSE OF ACTION**

7 **(PAGA Civil Penalties For Failure to Pay Wages For All Hours Worked)**

8 **(Labor Code §§ 204, 210, 218 and 1194, 1194.2)**

9 **(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)**

10 47. Plaintiff realleges and incorporates by this reference each of the preceding and
11 foregoing paragraphs as if fully set forth herein.

12 48. At all times herein relevant, Labor Code §§ 204, 218, 1194 and 1194.2, and the
13 applicable Wage Orders were in full force and effect. Labor Code § 204 requires employers to
14 pay all wages earned by any employee due and payable twice during each calendar month.

15 49. Pursuant to Labor Code § 218, Plaintiff may bring a civil action for such violations directly
16 against the employer.

17 50. At all times herein relevant, the Wage Orders and applicable California Code of
18 Regulations have applied and continue to apply to Plaintiff's and the Aggrieved Employees'
19 employment with Defendants, which state that "every employer shall pay to each employee
20 wages. . . for all hours worked."

21 51. "Hours worked" is defined as "the time during which an employee is subject to
22 the control of an employer and includes all the time the employee is suffered or permitted to
23 work, whether or not required to do so."

24 52. At all times pertinent hereto, Labor Code § 1194 provided: "Notwithstanding
25 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
26 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
27 civil action the unpaid balance of the full amount of this minimum wage or overtime
28 compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

1 53. At all times pertinent hereto, Labor Code § 1194.2 provides for the recovery of
2 prejudgment interest at the rate specified in Civil Code § 3289.

3 54. Labor Codes §§ 218.5, 218.6, 1194(a) and 1194.2(a) provide that an employee
4 who has not been paid the legal wage may also recover attorney's fees and costs of suit, as well
5 as liquidated damages and interest thereon.

6 55. At all relevant times herein, Defendants were required to compensate Plaintiff
7 and the Aggrieved Employees for all hours worked pursuant to Labor Code § 1194.

8 56. By uniformly failing to track and record all of the hours worked by Plaintiff and
9 Aggrieved Employees, including requiring them to work off the clock, Defendants were able
10 to skim wages from employees by not paying them a separate hourly wage for each and every
11 hour worked as required by California law. Through this unlawful and illegal policy and
12 practice, Defendants have failed to pay Plaintiff and Aggrieved Employees all wages owed to
13 them.

14 57. By the course of conduct set forth above, Defendants failed to pay all wages and
15 violated the minimum wage requirements as set forth in Labor Code §§ 218 and 1194.

16 58. Plaintiff is informed and believes and based thereupon alleges that the result of
17 the unlawful and illegal policy and practice caused the nonpayment of minimum and regular
18 wages to all Aggrieved Employees (and resulting civil penalties), in an amount according to
19 proof at trial.

20 59. Consequently, Plaintiff, on behalf of all aggrieved employees, seeks to recover civil
21 penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
22 subject to Court approval.

23 60. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
24 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
25 enforcement of California labor laws and applicable regulations is determined to be in the public
26 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
27 according to proof and subject to Court approval.

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(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)

68. “Hours worked” is defined as “the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to

1 work, whether or not required to do so.”

2 69. At all times pertinent hereto, Labor Code § 1194 provided: “Notwithstanding
3 any agreement to work for a lesser wage, any employee receiving less than the legal minimum
4 wage or the legal overtime compensation applicable to the employee is entitled to recover in a
5 civil action the unpaid balance of the full amount of this minimum wage or overtime
6 compensation, including interest thereon, reasonable attorney's fees, and costs of suit.”

7 70. At all relevant times herein, Defendants were required to compensate Plaintiff
8 and Aggrieved Employees for all hours worked pursuant to Labor Code § 1194.

9 71. Labor Code § 510(a) states in pertinent part: “Any work in excess of eight hours
10 in one workday and any work in excess of 40 hours in any one workweek ... shall be
11 compensated at the rate of no less than one and one-half times the regular rate of pay for any
12 employee.” In addition, Labor Code § 510(a) provides that “[a]ny work in excess of 12 hours
13 in one day shall be compensated at the rate of no less than twice the regular rate of pay for an
14 employee.”

15 72. Pursuant to Labor Code § 1198, it is unlawful to employ persons for longer than
16 the hours set by the IWC.

17 73. As set forth above, Plaintiff and Aggrieved Employees were entitled to be paid
18 overtime compensation for all overtime hours worked. They were regularly and consistently
19 required to work overtime during the PAGA Period, but were not paid at all and/or at the correct
20 rate of pay.

21 74. Throughout the PAGA Period, Plaintiff and Aggrieved Employees worked in
22 excess of 8 hours in a workday and/or 40 hours in a workweek.

23 75. During the PAGA Period, Defendants did not pay Plaintiff and Aggrieved
24 Employees overtime pay for all overtime hours worked and/or at the correct overtime rate of
25 pay.

26 76. By the course of conduct set forth above, Defendants failed to pay all such
27 wages. Plaintiff is informed and believes and based thereupon alleges that the result of the
28 unlawful and illegal policy and practice caused the nonpayment such wages to all Aggrieved

1 Employees (and resulting civil penalties), in an amount according to proof at trial.

2 77. Consequently, Plaintiff, on behalf of all Aggrieved Employees, seeks to recover
3 civil penalties pursuant to the PAGA for the alleged violations in an amount according to proof
4 and subject to Court approval.

5 78. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant
6 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
7 enforcement of California labor laws and applicable regulations is determined to be in the public
8 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
9 according to proof and subject to Court approval.

10 **THIRD CAUSE OF ACTION**

11 **(PAGA Civil Penalties For Failure to Provide Compliant Meal Periods and Rest Breaks)**

12 **(Labor Code §§ 226.7, 512, and Industrial Wage Order)**

13 **(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)**

14 79. Plaintiff realleges and incorporates by this reference each of the preceding and
15 foregoing paragraphs as if fully set forth herein.

16 80. Labor Code § 226.7(b) provides that "[a]n employer shall not require an employee
17 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the [IWC] ..."

19 81. Labor Code 512(a) provides that "[a]n employer may not employ an employee for
20 a work period of more than five hours per day without providing the employee with a meal period
21 of not less than 30 minutes, except that if the total work period per day of the employee is no more
22 than six hours, the meal period may be waived by mutual consent of both the employer and
23 employee."

24 82. Labor Code § 512(a) further provides that "[a]n employer may not employ an
25 employee for a work period of more than 10 hours per day without providing the employee with a
26 second meal period of not less than 30 minutes, except that if the total hours worked is no more than
27

1 12 hours, the second meal period may be waived by mutual consent of the employer and the
2 employee only if the first meal period was not waived.”

3 83. Labor Code § 516 provides that the IWC may adopt or amend working condition
4 orders with respect to meal periods for any workers in California consistent with the health and
5 welfare of those workers.

6 84. The Wage Order provides that “[u]nless the employee is relieved of all duty during
7 a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted
8 as time worked.” “An ‘on duty’ meal period shall be permitted only when the nature of the work
9 prevents an employee from being relieved of all duty and when by written agreement between the
10 parties an on-the-job paid meal period is agreed to. The written agreement shall state that the
11 employee may, in writing, revoke the agreement at any time.”

12 85. The Wage Order further provides that “[i]f an employer fails to provide an employee
13 a meal period in accordance with the applicable provisions of this order, the employer shall pay the
14 employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that
15 the meal period is not provided.”

16 86. The Aggrieved Employees consistently worked over 5 hours per shift and therefore
17 were entitled to a meal period of not less than 30 minutes prior to exceeding 5 hours of work.

18 87. In addition, the Aggrieved Employees worked over 10 hours per shift and therefore
19 were entitled to a second meal period of not less than 30 minutes prior to exceeding 10 hours of
20 work.
21

22 88. Throughout the PAGA Period, Defendants failed to consistently allow and provide
23 the meal periods required by applicable California law, including the Wage Orders. Plaintiff and
24 Aggrieved Employees regularly worked a full day and did not receive proper meal periods (as
25 detailed above).

26 89. Defendants failed to provide Plaintiff and Aggrieved Employees compliant meal
27 periods as required by law or compensate them at one hour of “premium wage” at the employee’s
28

1 regular rate of pay for each day that a meal period was not provided or otherwise compliant with
2 California law.

3 90. The Aggrieved Employees did not waive their meal periods by mutual consent with
4 Defendants or otherwise.

5 91. The Aggrieved Employees did not enter into any written agreement with Defendants
6 agreeing to an on-the-job paid meal period.

7 92. Similarly, Plaintiff and Aggrieved Employees were entitled to be authorized and
8 permitted paid, duty-free, uninterrupted 10-minute rest break for every four hours worked (or every
9 major fraction thereof)

10 93. Plaintiff and the Aggrieved Employees regularly worked shifts in excess of 3.5
11 hours without being permitted the opportunity to take a paid rest break of at least ten (10)
12 consecutive minutes, uninterrupted, relieved of all job duties; worked more than six (6) hours at a
13 time without being allowed a second paid ten (10) consecutive minute, uninterrupted, rest break,
14 relieved of all job duties; worked shifts in excess of ten hours without being allowed a third paid ten
15 (10) consecutive minute, uninterrupted, rest break, relieved of all job duties.

16 94. Defendants failed to authorize and permit Plaintiff and Aggrieved Employees to take
17 adequate rest breaks as required by law or compensate them at one hour of “premium wage” at the
18 employee’s regular rate of pay for each day that a rest break was not authorized, permitted or
19 otherwise compliant with California law.
20

21 95. Defendants failed to comply with the required meal period and rest break laws
22 established by Labor Code §§ 226.7, 512, 516 and the Wage Orders.

23 96. Therefore, Aggrieved Employees were effectively deprived of their legally required
24 meal-and-rest periods.

25 97. Consequently, Plaintiff, on behalf of all aggrieved employees, seeks to recover civil
26 penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
27 subject to Court approval.

28 98. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant

1 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
2 enforcement of California labor laws and applicable regulations is determined to be in the public
3 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
4 according to proof and subject to Court approval.

5 **FOURTH CAUSE OF ACTION**

6 **(PAGA Civil Penalties for Failure to Provide Accurate Wage Statements)**

7 **(Labor Code §§ 226, 226.3, 1174, 1174.5, and Industrial Wage Order)**

8 **((Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants))**

9 99. Plaintiff realleges and incorporates by this reference each of the preceding and
10 foregoing paragraphs as if fully set forth herein.

11 100. Defendants knowingly and intentionally failed to provide accurate, itemized wage
12 statements including, *inter alia*, total hours worked, gross and net wages earned, all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at each
14 hourly rate by the employee in accordance with Labor Code § 226(a).

15 101. Labor Code § 226(a) states, in pertinent part, that “[e]very employer shall,
16 semimonthly or at the time of each payment of wages, furnish each of his or his employees, either
17 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when
18 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
19 gross wages earned, (2) total hours worked by the employee ..., (5) net wages earned, (6) the
20 inclusive dates of the period for which the employee is paid ..., and (9) all applicable hourly rates
21 in effect during the pay period and the corresponding number of hours worked at each
22 hourly rate by the employee ...”

23 102. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for
24 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
25 Code section 2699(f)(2), cited above.

26 103. Labor Code section 226.3 provides in pertinent part: “Any employer who violates
27 subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty
28

1 dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
2 employee for each violation in a subsequent citation, for which the employer fails to provide the
3 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
4 Section 226. The civil penalties provided for in this section are in addition to any other penalty
5 provided by law...”

6 104. From the outset, Defendants have failed to comply with Labor Code § 226. As a
7 matter of common policy and practice, Defendants did not include the non-exempt hourly
8 employees’ “corresponding number of hours worked at each hourly rate by the employee.” In
9 addition, the wage statements distributed to Plaintiff and Aggrieved Employees did not contain all
10 wages earned or meal period and rest break premiums.

11 105. At all times relevant herein, Defendants failed to maintain records of hours worked
12 by Plaintiff and Aggrieved Employees as required under Labor Code § 1174(d).

13 106. Consequently, Plaintiff, on behalf of all Aggrieved Employees, seeks to recover
14 civil penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
15 subject to Court approval.

16 107. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
17 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
18 enforcement of California labor laws and applicable regulations is determined to be in the public
19 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
20 according to proof and subject to Court approval.

21
22 **FIFTH CAUSE OF ACTION**

23 **(PAGA Civil Penalties for Failure to Timely Pay All Wages Due Upon Separation)**

24 **(Labor Code §§ 201, 202, and 203)**

25 **(Brought by Plaintiff on Behalf of All Aggrieved Against All Defendants)**

26 108. Plaintiff realleges and incorporates by this reference each of the foregoing paragraphs as if
27 fully set forth herein.

28 109. Labor Code §§ 201 and 202 require Defendants to pay their employees all wages due within

1 the time specified by law. California Labor Code § 203 provides that if an employer willfully
2 fails to timely pay such wages, the employer must continue to pay the subject employees' wages
3 until the back wages are paid in full or an action is commenced, up to a maximum of 30 days
4 of wages.

5 110. All Aggrieved Employees who ceased employment with Defendants are entitled to unpaid
6 compensation (including meal period and rest break premiums), but to date have not received
7 such compensation.

8 111. More than 30 days have passed since certain Aggrieved Employees left Defendants'
9 employ.

10 112. As a consequence of Defendants' willful conduct in not paying compensation for all hours
11 worked, Aggrieved Employees whose employment ended during the PAGA Period are entitled
12 to 30 days' wages under Labor Code § 203, together with interest thereon and attorneys' fees
13 and costs.

14 113. Consequently, Plaintiff, on behalf of all Aggrieved Employees, seeks to recover civil
15 penalties pursuant to the PAGA for the alleged violations in an amount according to proof and
16 subject to Court approval.

17 114. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor
18 Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement
19 of California labor laws and applicable regulations is determined to be in the public interest and
20 consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according
21 to proof and subject to Court approval.

22 **V. PRAYER FOR RELIEF**

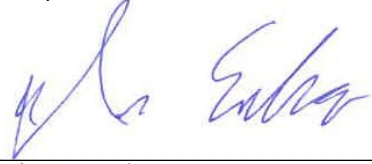
23 WHEREFORE, Plaintiff, on behalf of himself Aggrieved Employees he seeks to represent,
24 prays for relief as follows:
25

- 26 1. Designation of Plaintiff as the PAGA Representative for the Aggrieved Employees
27 and Plaintiff's attorneys as PAGA Counsel for the Aggrieved Employees;
- 28 2. Civil penalties, under PAGA;

3. Pre-judgment and post-judgment interest, as provided by law;
4. Such other equitable relief as the Court may deem just and proper; and
5. Attorneys' fees and costs of suit, including expert fees and fees pursuant to, among others, California Labor Code §§ 218.5, 226, 1194, PAGA, Code of Civil Procedure § 1021.5, and other applicable California laws.

Dated: January 8, 2024

BISNAR | CHASE LLP/ALPERS LAW GROUP

By: 

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Ian M. Silvers
Attorneys for Plaintiff and Aggrieved
Employees