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on behalf of himself and current and former aggrieved employees,

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County of Alameda
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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

KALIEN FRAZIER, on behalf of himself and
current and former aggrieved employees,

Plaintiff,

vs.

US BANK NATIONAL ASSOCIATION; and
DOES 1 to 100, inclusive,

Defendants.

Case No.: **23CV051063**

PAGA ACTION

**PLAINTIFF KALIEN FRAZIER'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff KALIEN FRAZIER ("Plaintiff"), who alleges and complains
against Defendants US BANK NATIONAL ASSOCIATION; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

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

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

II. JURISDICTION AND VENUE

2. This Court has jurisdiction over the claims of Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks civil penalties on behalf of herself, all other current and former aggrieved California-based hourly non-exempt employees, and the State of California in excess of twenty-five thousand dollars (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees occurred in locations throughout California, including but not limited to Alameda County at 828 31st Street #7 Oakland, California 94608.

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

III. PARTIES

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

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in Oakland from
6 approximately October 9, 2021, until on or about March 30, 2023.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant US BANK
8 NATIONAL ASSOCIATION is authorized to do business within the State of California and is
9 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
10 relevant hereto were persons acting on behalf of Defendant US BANK NATIONAL
11 ASSOCIATION in the establishment of, or ratification of, the aforementioned illegal wage and
12 hour practices or policies. Defendant US BANK NATIONAL ASSOCIATION operates in
13 Alameda County and employed Plaintiff and aggrieved employees in Alameda County, including
14 but not limited to, at 828 31st Street #7 Oakland, California 94608.

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

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

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

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

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

7 **FIRST CAUSE OF ACTION**

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

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

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

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

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

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

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

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

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

4 (a) Failure to pay Plaintiff and other current and former aggrieved California-based
5 hourly non-exempt employees time spent setting their workstations,

6 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
7 non-exempt employees daily to:

- 8 1. Power on or wake up work provided computer;
- 9 2. Allow computer to boot up;
- 10 3. Once the computer was booted, launch "Bitlocker" application and wait for
11 it to load;
- 12 4. Once the "Bitlocker" program is loaded, log into it using username and
13 password;
- 14 5. After successfully logging into the "Bitlocker" program, launch Microsoft
15 Windows and wait for the program to load;
- 16 6. Once Microsoft Windows is loaded, log into the program using username
17 and password;
- 18 7. After successfully logging into Microsoft Windows, launch the "Pulse
19 Secure VPN" application and wait for it to load;
- 20 8. Once the "Pulse Secure VPN" application is loaded, log into the application
21 using a username and password;
- 22 9. Once the username and password have been entered into the "Pulse Secure
23 VPN" application, retrieve 2-factor authentic code from "In Trust"
24 application required on a personal cell phone;
- 25 10. Once the 2-factor authentic code is received, the code is used in conjunction
26 with the log in credentials to access and load the VPN;
- 27 11. Once the VPN is loaded, launch a web browser application and navigate to
28 the "Bee" website;

12. Once on the “Bee” website, enter a username and password;

13. After completing the above steps, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees are finally able to clock in for the start of shift.

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

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

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

Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Labor Code section 510.

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

1 (a) Failure to pay Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees time spent setting their workstations,

3 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
4 non-exempt employees daily to:

- 5 1. Power on or wake up work provided computer;
- 6 2. Allow computer to boot up;
- 7 3. Once the computer was booted, launch “Bitlocker” application and wait for
8 it to load;
- 9 4. Once the “Bitlocker” program is loaded, log into it using username and
10 password;
- 11 5. After successfully logging into the “Bitlocker” program, launch Microsoft
12 Windows and wait for the program to load;
- 13 6. Once Microsoft Windows is loaded, log into the program using username
14 and password;
- 15 7. After successfully logging into Microsoft Windows, launch the “Pulse
16 Secure VPN” application and wait for it to load;
- 17 8. Once the “Pulse Secure VPN” application is loaded, log into the application
18 using a username and password;
- 19 9. Once the username and password have been entered into the “Pulse Secure
20 VPN” application, retrieve 2-factor authentic code from “In Trust”
21 application required on a personal cell phone;
- 22 10. Once the 2-factor authentic code is received, the code is used in conjunction
23 with the log in credentials to access and load the VPN;
- 24 11. Once the VPN is loaded, launch a web browser application and navigate to
25 the “Bee” website;
- 26 12. Once on the “Bee” website, enter a username and password;
- 27 13. After completing the above steps, Plaintiff and other current and former
28 aggrieved California-based hourly non-exempt employees are finally able to

1 clock in for the start of shift.

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

6 21. In this case, Plaintiff alleges that when he and other current and former aggrieved
7 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
8 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
9 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
10 policy, practice, and/or procedure of failing to include all remuneration such as quarterly bonuses,
11 for example, when calculating Plaintiff's and other current and former aggrieved California-based
12 hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

13 22. The foregoing policies, practices, and/or procedures resulted in time during each
14 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
15 employees were under the control of Defendants but were not compensated. To the extent that the
16 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
17 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
18 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
19 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
20 sections 510 and 1194 and the applicable Wage Order.

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

25 24. California law requires an employer to authorize or permit an employee an
26 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
27 all duties and the employer relinquishes control over the employee's activities prior to the
28 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*

1 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
2 employee for a work period of more than ten (10) hours per day without providing the employee
3 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
4 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
5 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
6 period is only permitted when: (1) the nature of the work prevents an employee from being
7 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

16 (a) Failure to authorize or permit meal periods to Plaintiff and other current and former
17 aggrieved California-based hourly non-exempt employees of no less than thirty (30) minutes for
18 each five-hour period of work as required by law

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

25 28. Finally, on occasions when Defendants paid Plaintiff and other current and former
26 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
27 short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1)
28 additional hour of pay at Plaintiff’s and other current and former aggrieved California-based

1 hourly non-exempt employees' regular rate of compensation. Specifically, Defendants maintained
2 a policy, practice, and/or procedure of failing to include all remuneration such as quarterly
3 bonuses, for example, when calculating Plaintiff's and other current and former aggrieved
4 California-based hourly non-exempt employees' regular rate of pay for the purpose of paying meal
5 period premium wages.

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

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

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

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

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

6 34. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
7 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
8 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
9 workday they did not receive legally required and compliant rest periods, in violation of Labor
10 Code section 226.7.

11 35. Finally, on occasions when Defendants did pay Plaintiff and other current and
12 former aggrieved California-based hourly non-exempt employees a "premium" wage for late,
13 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the
14 one (1) additional hour of pay at Plaintiff's and other current and former aggrieved California-
15 based hourly non-exempt employees' regular rate of compensation. Specifically, Defendants
16 maintained a policy, practice, and/or procedure of failing to include all remuneration such as
17 quarterly bonuses, for example, when calculating Plaintiff's and other current and former
18 aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of
19 paying rest period premiums.

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

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

27 38. Labor Code section 246, subdivision (a), states in relevant part "[a]n employee
28 who...works in California for the same employer for 30 or more days within a year from the

1 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
2 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked,
3 beginning at the commencement of employment. Labor Code section 246(b).

4 39. Here, Plaintiff and other current and former aggrieved California-based hourly non-
5 exempt employees were employed by Defendants for 30 or more days and were entitled to paid
6 sick days. Also, Plaintiff and other current and former aggrieved California-based hourly non-
7 exempt employees began accruing paid sick days since the beginning of each of their respective
8 employment with Defendants.

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

15 41. In this case, Plaintiff alleges that when he and other current and former aggrieved
16 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
17 pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include
18 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
19 policy, practice, and/or procedure of failing to include all remuneration such as, for example,
20 quarterly bonuses when calculating Plaintiff’s and other current and former aggrieved California-
21 based hourly non-exempt employees’ regular rate of pay for the purpose of calculating and paying
22 sick time.

23 42. **Failure to timely pay earned wages during employment:** In California, wages
24 must be paid at least twice during each calendar month on days designated in advance by the
25 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
26 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
27 16th and the 26th day of that month and wages earned between the 16th and the last day,
28 inclusive, of any calendar month must be paid between the 1st and 10th day of the following

1 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
2 paid within seven (7) calendar days following the close of the payroll period in which wages were
3 earned. Labor Code section 204(d).

4 43. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
5 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
6 exempt employees' earned wages (including minimum wages, overtime wages at the proper
7 overtime rate of pay for overtime hours worked, meal period premium wages and/or meal period
8 premium wages at the proper rate, and/or rest period premium wages and/or rest period premium
9 wages at the proper rate, sick pay wages paid at the proper rate), in violation of Labor Code
10 section 204. Defendants' aforementioned policies, practices, and/or procedures resulted in their
11 failure to pay Plaintiff's and other current and former aggrieved California-based hourly non-
12 exempt employees' their earned wages within the applicable time frames outlined in Labor Code
13 section 204.

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

27 45. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
28 and other current and former aggrieved California-based hourly non-exempt employees all wages

1 earned (including minimum wages, overtime wages at the proper overtime rate of pay for overtime
2 hours worked, meal period premium wages and/or meal period premium wages at the proper rate,
3 and/or rest period premium wages and/or rest period premium wages at the proper rate, sick pay
4 wages paid at the proper rate) rendered Plaintiff's and other current and former aggrieved
5 California-based hourly non-exempt employees' wage statements inaccurate, in violation of Labor
6 Code section 226.

7 46. **Failure to pay employees all wages due at time of termination/resignation:** An
8 employer is required to pay all unpaid wages timely after an employee's employment ends. The
9 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
10 hours of resignation (Labor Code section 202).

11 47. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
12 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
13 all their earned wages (including minimum wages, overtime wages at the proper overtime rate of
14 pay for overtime hours worked, meal period premium wages and/or meal period premium wages
15 at the proper rate, and/or rest period premium wages and/or rest period premium wages at the
16 proper rate, sick pay wages paid at the proper rate), Defendants failed to pay those employees
17 timely after each employee's termination and/or resignation, in violation of Labor Code sections
18 201, 202, and 203.

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

23 49. Plaintiff has complied with the procedures for bringing suit specified in Labor
24 Code section 2699.3. On September 6, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
25 and provided notice to Defendants by certified mail which provided notice of the specific
26 provisions of the Labor Code alleged to have been violated, including the facts and theories to
27 support the violations alleged.

28 50. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by

1 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
2 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
3 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
4 to investigate Plaintiff's claims.

5 51. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
6 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 246,
7 510, 512, 1194, 1197, During Plaintiff's employment and continuing through the present,
8 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
9 following amounts:

10 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, and 512;
11 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation
12 and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
13 violation [penalty amounts established by Labor Code section 2699(f)(2)].

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

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

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

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

28 **PRAYER FOR RELIEF**

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

3 ON THE FIRST CAUSE OF ACTION:

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

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

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

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

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14 Dated: November 13, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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16 By: 
17 _____
18 Joseph Lavi, Esq.
19 Vincent C. Granberry, Esq.
20 Cassandra A. Castro, Esq.
21 Attorneys for Plaintiff
22 KALIEN FRAZIER,
23 on behalf of himself and current and former
24 aggrieved employees
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