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DEPUTY CLERK

ASSIGNED TO
JUDGE CHRISTINE CARRINGER
FOR ALL PURPOSES

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Attorneys for Plaintiff AVERY L JOSEPH,
on behalf of himself and current and former aggrieved employees,

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

AVERY L JOSEPH, on behalf of himself and
current and former aggrieved employees,

Plaintiff,

vs.

US AIR CONDITIONING DISTRIBUTORS,
LLC; and DOES 1 to 100, inclusive,

Defendants.

Case No.: **CU23-06070**

PAGA ACTION

**PLAINTIFF AVERY L JOSEPH'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff AVERY L JOSEPH ("Plaintiff"), who alleges and complains
against Defendants US AIR CONDITIONING DISTRIBUTORS, LLC; 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

1 hours worked at the employees' overtime rate, failure to provide all legally required and legally
2 compliant meal and rest periods, failure to timely pay earned wages during employment, failure to
3 provide complete and accurate wage statements, failure to timely pay all unpaid wages following
4 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor
5 and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor
6 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
7 others aggrieved.

8 **II. JURISDICTION AND VENUE**

9 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
10 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
11 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
12 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
13 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
14 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
15 aggrieved California-based hourly non-exempt employees occurred in locations throughout
16 California, including but not limited to Solano County at 815 Chadbourne Road, Fairfield, CA
17 94534.

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

22 **III. PARTIES**

23 4. Plaintiff brings this action as a representative of the Labor and Workforce
24 Development Agency on behalf of himself and other current and former employees subject to
25 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
26 filed include current, former and/or future employees of Defendants who work, worked, or will
27 work for Defendants as direct employees as well as temporary employees employed through temp
28 agencies as hourly non-exempt employees in California. At all times mentioned herein, the

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in Fairfield from
3 approximately January 28, 2023 until on or about June 9, 2023.

4 5. Plaintiff is informed and believes and thereon alleges that Defendant US AIR
5 CONDITIONING DISTRIBUTORS, LLC is authorized to do business within the State of
6 California and is doing business in the State of California and/or that Defendants DOES 1-50 are,
7 and at all times relevant hereto were persons acting on behalf of Defendant US AIR
8 CONDITIONING DISTRIBUTORS, LLC in the establishment of, or ratification of, the
9 aforementioned illegal wage and hour practices or policies. Defendant US AIR CONDITIONING
10 DISTRIBUTORS, LLC operates in Solano County and employed Plaintiff and aggrieved
11 employees in Solano County, including but not limited to, at 815 Chadbourne Road, Fairfield, CA
12 94534.

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

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

24 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
25 sues said defendants by said fictitious names, and will amend this complaint when the true names
26 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
27 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
28 named defendants is in some manner responsible for the events and allegations set forth in this

1 complaint.

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

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
7 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

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

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

13 12. Specifically, Defendants have committed the following violations of California
14 Labor Code:

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

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

24 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
25 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
26 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
27 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
28 (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.

1 Labor Code section 510.

2 15. In this case, Defendants failed to pay Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
4 worked due to Defendants' policies, practices, and/or procedures.

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

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

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

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

28 20. California law requires an employer to authorize or permit an employee an

uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

(a) Failing to provide Plaintiff and other current and former aggrieved California-based hourly non-exempt employees timely, uninterrupted, duty-free meal breaks of at least 30 minutes for every five hours worked.

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

24. Finally, on occasions when Defendants paid Plaintiff and other current and former

aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed, short, on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’ regular rate of compensation. Specifically, Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration such as “bonus pay”, for example, when calculating Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the purpose of paying meal period premium wages.

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

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

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

28. If the employer fails to authorize or permit a required rest period, the employer

1 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
2 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
3 Wage Order 4 at § 12.

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

8 (a) Failing to provide Plaintiffs and other current and former aggrieved California-
9 based hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours
10 worked or major fraction thereof.

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

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

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

1 33. **Failure to timely pay earned wages during employment:** In California, wages
2 must be paid at least twice during each calendar month on days designated in advance by the
3 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
4 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
5 16th and the 26th day of that month and wages earned between the 16th and the last day,
6 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
7 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
8 paid within seven (7) calendar days following the close of the payroll period in which wages were
9 earned. Labor Code section 204(d).

10 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
11 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
12 exempt employees' earned wages (including overtime wages, meal period premium wages, and/or
13 rest period premium wages), in violation of Labor Code section 204. Defendants' aforementioned
14 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current
15 and former aggrieved California-based hourly non-exempt employees' their earned wages within
16 the applicable time frames outlined in Labor Code section 204.

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

1 the corresponding number of hours worked at each hourly rate by the employee.”

2 36. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
3 and other current and former aggrieved California-based hourly non-exempt employees all wages
4 earned (including overtime wages, meal period premium wages, and/or rest period premium
5 wages) rendered Plaintiff’s and other current and former aggrieved California-based hourly non-
6 exempt employees’ wage statements inaccurate, in violation of Labor Code section 226.

7 37. **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 38. 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 overtime wages, meal period premium wages, and/or rest period
14 premium wages), Defendants failed to pay those employees timely after each employee’s
15 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

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

20 40. Plaintiff has complied with the procedures for bringing suit specified in Labor
21 Code section 2699.3. On October 12, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA
22 and provided notice to Defendants by certified mail which provided notice of the specific
23 provisions of the Labor Code alleged to have been violated, including the facts and theories to
24 support the violations alleged.

25 41. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
26 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
27 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
28 parties notice within 60 days of the date of Plaintiff’s PAGA Claim Notice that the LWDA intends

1 to investigate Plaintiff's claims.

2 42. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
3 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
4 512, and 1194, During Plaintiff's employment and continuing through the present, preceding
5 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following
6 amounts:

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

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

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

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

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

25 **PRAYER FOR RELIEF**

26 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**
27 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

28 **ON THE FIRST CAUSE OF ACTION:**

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

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

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

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

10
11 Dated: December 18, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

12
13 By:



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