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

CV-24-001637

DAVID NUNEZ, individually, and on behalf of
the State of California and other aggrieved
persons,

Plaintiff,

v.

NORCAL DALE PARTNERS, L.P. DBA
JOHNNY CARINO'S, a Nevada limited
partnership; NORCAL DALE PARTNERS,
LLC, a Nevada limited liability company;
BLUESTONE HOSPITALITY, LLC, an
unknown entity; BLUESTONE HOSPITALITY
WEST, LLC, a Delaware limited liability
company; and DOES 1 through 10, inclusive,

Defendants.

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Superior Court of California
County of Stanislaus
Clerk of the Court
By: Dora Perez, Deputy

\$1000 PAID

\$435 PAID

Case No.:

**PAGA REPRESENTATIVE ACTION
COMPLAINT:**

1. Civil Penalties Under PAGA [Cal. Lab.
Code § 2699, et seq.]

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

Plaintiff David Nunez (“Plaintiff”), on information and belief, alleges as follows:

INTRODUCTION & PRELIMINARY STATEMENT

1. Plaintiff brings this action individually, and on behalf of the State of California and other aggrieved persons, against Defendants NorCal Dale Partners, L.P. dba Johnny Carino’s, NorCal Dale Partners, LLC, Bluestone Hospitality, LLC, Bluestone Hospitality West, LLC, and DOES 1 through 10 (collectively referred to as “Defendants”) for civil penalties under the Private Attorneys General Act of 2004, California Labor Code §§ 2698 *et seq.* (“PAGA”) stemming from Defendants’ failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to pay all earned wages twice per month, failure to maintain accurate records of hours worked and meal periods, failure to timely pay final wages, failure to furnish accurate wage statements, failure to indemnify employees for expenditures, and failure to produce requested employment records.

2. For over 50 years, California’s courts and Legislature have recognized that this State’s wage-and-hour laws serve a compelling public interest of fostering a stable job market. Wages are not ordinary debts. Because of the economic position of the average worker and his or her family, it is essential to the public welfare that employers obey the wage-and-hour laws so that employees are promptly paid the minimum/overtime wages that the Legislature has required for employees. So fundamental are California’s wage-and-hour laws that the Legislature has criminalized certain types of violations. In extending extra protection to deter violations of these underlying statutes—since Plaintiff is not seeking general and/or special damages, restitution, or other damages other than civil penalties—California has enacted PAGA to permit an individual to bring an action for PAGA penalties only, which is the precise and sole nature of this action.

3. All California employees during the relevant period who are or were harmed by Defendants’ illegal practices are “Aggrieved Employees.” The Aggrieved Employees worked for Defendants as hourly-paid or non-exempt employees within the applicable period.

4. Plaintiff brings this action against Defendants seeking only to recover penalties on behalf of Plaintiff individually, on behalf of certain Aggrieved Employees that worked for Defendants, and on behalf of the State of California. Plaintiff does not seek to recover anything

1 other than penalties as permitted by California Labor Code Section 2699 at this time. To the extent
2 that statutory violations are mentioned for wage violations, Plaintiff does not seek underlying
3 general and/or special damages for those violations, but simply penalties as permitted by California
4 Labor Code Section 2699, declaratory relief, and injunctive relief for Plaintiff individually, and
5 certain Aggrieved Employees as permitted by the PAGA.

6 5. Defendants own/owned and operate/operated an industry, business, and
7 establishment within the State of California, including Stanislaus County. As such and based upon
8 all the facts and circumstances incident to Defendants' businesses in California, Defendants are
9 subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission
10 ("IWC"), and the California Business & Professions Code.

11 6. On information and belief, Defendants were on actual and constructive notice of the
12 improprieties alleged herein and intentionally refused to rectify Defendants' unlawful practices.
13 Defendants' violations, as alleged above, during all relevant times herein were willful and
14 deliberate.

15 7. At all relevant times, Defendants were and are legally responsible for all of the
16 unlawful conduct, patterns, practices, acts and omissions as described in each and all of the
17 foregoing paragraphs as the employer of Plaintiff and the Aggrieved Employees, or some them.
18 Further, Defendants are responsible for each of the unlawful acts or omissions complained of
19 herein under the doctrine of "respondeat superior."

20 THE PARTIES

21 **A. Plaintiff**

22 8. Plaintiff David Nunez is a resident of Modesto, California who worked for
23 Defendants in Stanislaus County, California as an hourly-paid, non-exempt employee from
24 approximately January 2022 to approximately May 2023.

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1 **B. Defendants**

2 9. Plaintiff is informed and believes, and based upon that information and belief
3 alleges, that Defendants NorCal Dale Partners, L.P. dba Johnny Carino's, NorCal Dale Partners,
4 LLC, Bluestone Hospitality, LLC, and Bluestone Hospitality West, LLC are, and at all times herein
5 mentioned, were:

- 6 (a) Business entities conducting business in numerous counties throughout the
7 State of California, including Stanislaus County; and,
8 (b) The former employers of Plaintiff, and the current and/or former employers
9 of Aggrieved Employees, because Defendants NorCal Dale Partners, L.P.
10 dba Johnny Carino's, NorCal Dale Partners, LLC, Bluestone Hospitality,
11 LLC, and Bluestone Hospitality West, LLC suffered and permitted Plaintiff
12 and Aggrieved Employees to work; and/or controlled their wages, hours, or
13 working conditions; and or engaged Plaintiff and Aggrieved Employees,
14 thereby creating a common law employment relationship.

15 10. Plaintiff does not know the true names or capacities of the persons or entities sued
16 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each
17 of the Doe Defendants were in some manner legally responsible for the damages suffered by
18 Plaintiff and certain Aggrieved Employees as alleged herein. Plaintiff will amend this complaint
19 to set forth the true names and capacities of these Defendants when they have been ascertained,
20 together with appropriate charging allegations, as may be necessary.

21 11. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
22 each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or
23 injured a significant number of the Plaintiff and certain Aggrieved Employees in the State of
24 California.

25 12. Plaintiff is informed and believes and thereon alleges that at all relevant times each
26 Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the
27 other employees and exercised control over their wages, hours, and working conditions. Plaintiff
28 is informed and believes and thereon alleges that, at all relevant times, each Defendant was the

principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or predecessor in interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants.

ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

13. Plaintiff worked for Defendants in Stanislaus County, California as an hourly-paid, non-exempt employee from approximately January 2022 to approximately May 2023. At all times, Defendants paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime.

14. Throughout Plaintiff's employment, Defendants committed numerous labor code violations under state law. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative.

A. Failure to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

15. Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is 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 work, whether or not required to do so.

16. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

17. Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

18. Throughout the statutory period, Defendants maintained a pattern and practice of not paying Plaintiff and certain Aggrieved Employees for all hours worked, including minimum wages, straight time, and overtime wages. Defendants required Plaintiff and certain Aggrieved Employees to work “off-the-clock,” uncompensated, by, for example, requiring Plaintiff and certain Aggrieved Employees to perform work during uncompensated meal periods and/or requiring Plaintiff and certain Aggrieved Employees to perform work after clocking out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendants also failed, at times, to maintain accurate records of the hours Plaintiff and certain Aggrieved Employees worked.

B. Failure to Provide Meal Periods

19. Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the end of the fifth hour of work in a workday, and to allow employees to take their second 30-minute meal period no later than the end of the tenth hour of work in a workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with a required meal period(s).

20. Despite these legal requirements, Defendants wrongfully failed, at times, to provide Plaintiff and the Aggrieved Employees, or some of them, with their legally mandated 30-minute, uninterrupted, and duty-free meal period in a manner required by law. Defendants also continued to assert control over Plaintiff and the Aggrieved Employees, or some of them, by, among other things, requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and certain Aggrieved Employees permission to take a meal period under the conditions required by law, and without properly compensating Plaintiff and the Aggrieved Employees, or some of them, for meal periods that were not provided as required by law. Defendants also never informed Plaintiff of Plaintiff’s right to, nor permitted Plaintiff to take, a second meal period when Plaintiff worked at least ten hours of work in a workday and otherwise unlawfully pressured Plaintiff to

1 waive such breaks. Accordingly, Defendants' pattern and practice was not to provide meal periods
2 to Plaintiff and certain Aggrieved Employees in compliance with California law.

3 21. Plaintiff and the Aggrieved Employees, or some of them, are thus entitled to be paid
4 one hour of additional wages for each workday he or she was not provided with all required meal
5 period(s). Defendants, however, at times, failed to pay Plaintiff and the Aggrieved Employees, or
6 some of them, the additional wages to which they were entitled for meal periods that were not
7 provided.

8 **C. Failure to Authorize and Permit Rest Breaks**

9 22. Employers are required by California law to authorize and permit breaks of ten
10 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
11 two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the
12 employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself
13 a violation of California's rest break laws.

14 23. Throughout the statutory period, Defendants have, at times, wrongfully failed to
15 authorize and permit Plaintiff and the Aggrieved Employees, or some of them, to take legally
16 compliant rest periods in a manner required by law. Defendants, at times, also required Plaintiff
17 and the Aggrieved Employees, or some of them, to work in excess of four consecutive hours a day
18 without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free
19 rest period for every four hours of work (or major fraction of four hours), and without properly
20 compensating Plaintiff and the Aggrieved Employees, or some of them, for rest periods that were
21 not authorized or permitted. Instead, among other things, Defendants continued to assert control
22 over Plaintiff and the Aggrieved Employees, or some of them, by requiring, pressuring, or
23 encouraging them to perform work tasks which could not be completed without working in lieu of
24 taking mandatory rest periods, and by denying Plaintiff and the Aggrieved Employees, or some of
25 them, permission to take a rest period under the conditions required by law. Accordingly,
26 Defendants' pattern and practice was to not authorize and permit Plaintiff and the Aggrieved
27 Employees, or some of them, to take rest periods in compliance with California law.

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24. Plaintiff and certain Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest periods. Defendants, however, at times, failed to pay Plaintiff and certain Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

D. Failure to Pay All Earned Wages Twice Per Month

25. Based on Defendants' failure to pay Plaintiff and certain Aggrieved Employees for all wages as discussed above, Defendants also violated Labor Code § 204.

26. Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, at times, Defendants systematically failed and refused to pay the employees all wages due, and failed, at times, to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendants, all wages for all rest periods not authorized and permitted by Defendants, and all wages for all hours worked. As a result, Defendants owe employees the legally required wages not paid, and Plaintiff and certain Aggrieved Employees suffered damages in those amounts.

E. Failure to Maintain Accurate Records of Hours Worked and Meal Periods

27. Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

28. Defendants, however, at times, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and certain Aggrieved Employees.

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29. Defendants' failure to provide and maintain records required by the California Labor Code and applicable IWC Wage Orders deprived Plaintiff and certain Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendants' records. Therefore, Plaintiff and certain Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved Employees, or some of them, have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendants to fully perform Defendants' obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendants' knowing failure to comply with the California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees, or some of them, have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

F. Failure to Timely Pay All Wages at Termination

30. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

31. Within the applicable period, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendants failed, and continue to fail to pay Plaintiff and certain terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employment. These unpaid wages include wages for unpaid work time (including minimum,

1 straight time, and overtime wages), missed meal period premium wages, and missed rest period
2 premium wages.

3 32. Defendants' conduct violates Labor Code §§ 201 and 202. Labor Code § 203
4 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201
5 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and
6 at the same rate until paid or until an action is commenced; but the wages shall not continue for
7 more than thirty (30) days.

8 33. Accordingly, Plaintiff and the Aggrieved Employees, or some of them, are entitled
9 to recover from Defendants their additionally accruing wages for each day they were not paid, at
10 their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

11 **G. Failure to Furnish Accurate Itemized Wage Statements**

12 34. Labor Code § 226(a) provides that every employer shall furnish each of his or her
13 employees an accurate itemized wage statement in writing showing nine pieces of information,
14 including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-
15 rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all
16 deductions, provided that all deductions made on written orders of the employee may be aggregated
17 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the
18 employee is paid, (7) the name of the employee and the last four digits of his or her social security
19 number or an employee identification number other than a social security number, (8) the name
20 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect
21 during the pay period and the corresponding number of hours worked at each hourly rate by the
22 employee. An employee is presumed to suffer an injury if this information is missing. (Labor Code
23 § 226(e)(2)(B)(iii).)

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1 35. The statute further provides: “An employee suffering injury as a result of a knowing
2 and intentional failure by an employer to comply with subdivision (a) is entitled to recover the
3 greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation
4 occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period,
5 not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award
6 of costs and reasonable attorney’s fees.” (Labor Code § 226(e)(1).)

7 36. Throughout the statutory period, Defendants failed, at times, to furnish Plaintiff and
8 the Aggrieved Employees, or some of them, with accurate, itemized wage statements showing all
9 applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct
10 wages for meal periods that were not provided in accordance with California law, and correct
11 wages for rest periods that were not authorized and permitted to take in accordance with California
12 law). Because Defendants violated Labor Code § 226, Plaintiff and similarly Aggrieved
13 Employees, or some of them, suffered injury and damage to their statutorily protected rights.
14 Accordingly, Plaintiff and similarly Aggrieved Employees, or some of them, are entitled to recover
15 damages from Defendants including the greater of their actual damages caused by Defendants’
16 failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand
17 dollars (\$4,000) dollars per employee, or as otherwise permitted by PAGA based upon all bases of
18 liability.

19 **H. Failure to Indemnify for Necessary Expenditures**

20 37. Labor Code § 2802(a) provides that employers shall indemnify their employees for
21 all necessary business expenditures or losses that have been incurred by the employees in direct
22 discharge of his or her duties. Throughout the period applicable to this cause of action, Defendants
23 wrongfully required Plaintiff and certain Aggrieved Employees to pay expenses that they incurred
24 in direct discharge of their duties for Defendants. Plaintiff and similarly Aggrieved Employees, or
25 some of them, paid out-of-pocket for necessary employment-related expenses, including, without
26 limitation, tools. Plaintiff and similarly Aggrieved Employees, or some of them, incurred
27 substantial expenses as a direct result of performing their job duties for Defendants, but Defendants
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1 failed, at times, to indemnify Plaintiff and certain Aggrieved Employees for these employment-
2 related expenses.

3 38. As a result, Defendants are liable to Plaintiff and certain Aggrieved Employees for
4 the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify
5 Plaintiff and the Aggrieved Employees for necessary business expenditures.

6 **I. Failure to Produce Requested Employment Records**

7 39. Pursuant to California Labor Code § 226, current and former employees have the
8 right to inspect or receive a copy of their records pertaining to their employment, upon reasonable
9 request to their employer. Under this statute, an employer that receives a request to inspect or
10 receive a copy of records pertaining to a current or former employee must comply with the request
11 as soon as practicable, but no later than twenty-one (21) calendar days from the date of the request.

12 40. Pursuant to California Labor Code § 1198.5(a), every current and former employee,
13 or his or her representative, has the right to inspect and receive a copy of the personnel records that
14 the employer maintains relating to the employee's performance or to any grievance concerning the
15 employee. Under this statute, upon written request from a current or former employee or his or her
16 representative, an employer must make the contents of those personnel records available for
17 inspection or provide a copy of the personnel records to the current or former employee, or his or
18 her representative, not later than thirty (30) calendar days from the date the employer receives the
19 written request, subject to some limited exceptions. Failure to comply with these requests allows
20 for a civil penalty seven hundred fifty dollars (\$750), pursuant to Labor Code §§ 1198.5(k) and
21 226(f).

22 41. Pursuant to California Labor Code § 432, if an employee or applicant signs any
23 instrument relating to the obtaining or holding of employment, he or she shall be given a copy of
24 the instrument upon request.

25 42. As set forth above, Plaintiff and the Aggrieved Employees are current and former
26 employees of Defendants.

27 43. Plaintiff sent written requests through Plaintiff's counsel to Defendants for
28 Plaintiff's personnel file, pay records, wage statements, timekeeping records, and other

1 employment-related documents pursuant to Labor Code section 226, 1198.5, and 432. However,
2 Defendants failed to timely produce the requested employment records.

3 44. Defendants violated California Labor Code §§ 226, 1198.5, and 432 by failing to
4 timely produce the required records requested by Plaintiff.

5 45. On information and belief, Defendants' failure to provide Plaintiff with Plaintiff's
6 requested employment records is not an isolated incident but was instead consistent with
7 Defendants' policy and practice that applied to Plaintiff and certain Aggrieved Employees.

8 46. Pursuant to California Labor Code § 1198.5, Plaintiff and certain Aggrieved
9 Employees are entitled to a penalty of seven hundred fifty dollars (\$750) from Defendants,
10 injunctive relief in the form of compliance with section 1198.5, and attorneys' fees and costs.

11 47. Pursuant to California Labor Code § 226, Plaintiff is entitled to a penalty of seven
12 hundred fifty dollars (\$750) from Defendants, injunctive relief in the form of compliance with
13 section 226, and attorneys' fees and cost.

14 **FIRST CAUSE OF ACTION**

15 **(By All Plaintiffs Against All Defendants for Civil Penalties Under the Private Attorneys**
16 **General Act of 2004, Cal. Lab. Code § 2698 et seq.)**

17 48. Plaintiff incorporates by reference and re-alleges all preceding paragraphs as though
18 fully set forth herein.

19 49. At all times herein mentioned, Defendants were subject to the Labor Code of the
20 State of California and the applicable IWC Orders.

21 50. California Labor Code § 2699(a) specifically provides for a private right of action
22 to recover penalties for violations of the Labor Code: "Notwithstanding any other provision of law,
23 any provision of this code that provides for a civil penalty to be assessed and collected by the Labor
24 and Workforce Development Agency or any of its departments, divisions, commissions, boards,
25 agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a
26 civil action brought by an aggrieved employee on behalf of herself or himself and other current or
27 former employees pursuant to the procedures specified in Section 2699.3."

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52. Based on the conduct described in this Complaint, Plaintiff is entitled to an award of civil penalties individually, on behalf of the State of California and certain similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in all, is in an amount to be shown according to proof at trial. These penalties are in addition to all other remedies permitted by law.

53. In addition, Plaintiff seeks an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g)(1), which states, "Any employee who prevails in any action shall be entitled to an award of reasonable attorney's fees and costs."

Plaintiff, individually, and on behalf of the State of California, and on behalf of all similarly aggrieved employees, prays for relief and judgment against Defendants, jointly and severally, as follows:

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Respectfully submitted,

Dated: February 29, 2024

WILSHIRE LAW FIRM

By:

John G. Yslas
Jeffrey C. Bills
Aram Boyadjian
Andrew Sandoval

Attorneys for Plaintiff