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ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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By: Maria Rubio, DEPUTY

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

(UNLIMITED JURISDICTION)

JOSUE MARQUEZ, as an “aggrieved
employee” on behalf of himself and other
similarly situated “aggrieved employees”
under the Labor Code Private Attorneys
General Act of 2004,

Plaintiff,

vs.

FD OPCO, LLC; and DOES 1 to 25, inclusive,

Defendants.

CIVSB2412174
Case No.

**COMPLAINT FOR VIOLATIONS
OF THE LABOR CODE AND CIVIL
PENALTIES UNDER THE LABOR
CODE PRIVATE ATTORNEYS
GENERAL ACT OF 2004, LABOR
CODE §§ 2698, ET SEQ.**

JURY TRIAL DEMANDED

1 Plaintiff, Josue Marquez (hereafter “Plaintiff”), on behalf of himself, the State of
2 California, and the other Aggrieved Employees, complains and alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff brings this representative action under the Labor Code Private Attorneys
5 General Act of 2004, § 2698, *et seq.* (“PAGA”) based on alleged violations of the California
6 Labor Code and Industrial Welfare Commission Order No. 5-2001 (hereafter “the Wage Order”),
7 against Defendants FD OPCO, LLC, and DOES 1 to 25, inclusive (collectively “FD OPCO” or
8 “Defendants”).

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him, the State of California, and the Aggrieved Employees (defined below), for civil penalties
11 and other related relief. These claims are based on Defendants’ failures to: 1) pay all wages,
12 including minimum, regular, overtime, and doubletime wages earned for all hours worked at the
13 correct rates of pay; 2) provide meal periods or pay correctly-calculated premium wages in lieu
14 thereof; 3) authorize and permit rest periods or pay correctly-calculated premium wages in lieu
15 thereof; 4) indemnify for business expenses; 5) issue only accurate and complete itemized wage
16 statements; 6) timely pay wages during employment; 7) timely pay wages upon separation from
17 employment; and 8) maintain accurate employment records. Accordingly, Plaintiff now seeks to
18 recover civil penalties and related relief through this representative action.

19 **JURISDICTION AND VENUE**

20 3. Jurisdiction and Venue are proper in this Court and this action is properly filed in
21 the County of San Bernardino in this judicial district because Defendants FD OPCO, LLC and
22 DOES 1 to 25, inclusive, do business in the County of San Bernardino and because Defendants’
23 obligations and liabilities arise therein, and because the work that was performed by Plaintiff and
24 the Aggrieved Employees in the County of San Bernardino is the subject of this action. Moreover,
25 the aggregate claims of Plaintiff and the Aggrieved Employees, inclusive of all relief, place more
26 than \$25,000 in controversy.

27 **THE PARTIES**

28 4. Plaintiff Josue Marquez is resident of California.

1 5. Defendant FD OPCO, LLC is a Delaware limited liability company doing business
2 in California, and which employed Plaintiff. As such, it is a citizen of California based on
3 Plaintiff's information and belief.

4 6. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
5 participation in the conduct alleged herein of the Defendants sued as DOES 1-25, inclusive, but
6 is informed and believes and thereon alleges that said Defendants are legally responsible for the
7 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
8 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
9 when ascertained.

10 7. The "Aggrieved Employees" are all individuals the Defendants have employed or
11 otherwise contracted with in California as hourly, non-exempt employers, during the period
12 beginning one year before the Plaintiff's notice of February 1, 2024 to the California Labor and
13 Workforce Development Agency ("LWDA") and ending on the date judgment is entered.

14 8. Plaintiff is informed and believes and thereon alleges that, at all relevant times
15 herein, all Defendants were the agents, employees and/or servants, masters or employers of the
16 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
17 and scope of such agency or employment, and with the approval and ratification of each of the
18 other Defendants.

19 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
20 Defendants, and each of them, acted pursuant to and in furtherance of a policy, practice, or a lack
21 of a practice which resulted in Defendants not paying Plaintiff and the other Aggrieved
22 Employees in accordance with applicable California labor laws as alleged herein.

23 10. Plaintiff is informed and believes and thereon alleges that each and every one of
24 the acts and omissions alleged herein were performed by, and/or attributable to, all Defendants,
25 each acting as agents and/or employees, and/or under the direction and control of each of the other
26 defendants, and that said acts and failures to act were within the course and scope of said agency,
27 employment, and/or direction and control.

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1 **FACTUAL ALLEGATIONS**

2 11. IWC Wage Order 5-2001 (“the Wage Order”) applies to “all persons employed in
3 the public housekeeping industry,” where “Public Housekeeping Industry” includes
4 “Restaurants.” (*Id.*, §§ 1 & 2(P)(1).). At all relevant times during the applicable limitations period,
5 FD OPCO, LLC operated restaurants. Accordingly, Plaintiff and the Aggrieved Employees are
6 entitled to the protections provided under the Wage Order.

7 12. FD OPCO first began to employ Plaintiff on or around July 31, 2018 to work at its
8 Famous Dave’s Bar-B-Que restaurant located at 13122 Jamboree Rd, Irvine, CA 92602. On or
9 around May 1, 2023, FD OPCO transferred Plaintiff to its Famous Dave’s Bar-B-Que restaurant
10 located at 11470 Fourth St, Rancho Cucamonga, CA 91730. During his employment, Plaintiff’s
11 job titles included “cook” and “kitchen manager.” During his tenure at the Rancho Cucamonga
12 location, Plaintiff generally worked Wednesday through Sunday, from 1:00/2:00 p.m. to 10:00
13 p.m. Plaintiff’s employment ended on or around January 12, 2024.

14 13. At all relevant times, FD OPCO has issued wages to Plaintiff and all of the other
15 Aggrieved Employees on a bi-weekly basis and paid him by the hour. At all relevant times, FD
16 OPCO has classified Plaintiff and all of the other Aggrieved Employees as a non-exempt
17 employee entitled to the protections of the Labor Code and the Wage Order. Plaintiff’s latest rate
18 of pay is approximately \$23.50 per hour.

19 14. FD OPCO has failed to pay Plaintiff and the other Aggrieved Employees for all
20 time worked or subject to its control. Plaintiff and the other Aggrieved Employees consistently
21 worked “off the clock” in that the company has had a policy and practice of “time shaving” which
22 led to Plaintiff and others not being paid for all hours worked, which would include the minimum
23 wage. Moreover, at all relevant times, FD OPCO required Plaintiff and the Aggrieved Employees
24 to perform work off-the-clock and failed to compensate them for this time. FD OPCO instructed
25 Plaintiff to perform necessary work duties before clocking in for the start of his shifts, including
26 but not limited to, helping in the kitchen with orders, or picking up supplies (from Target or other
27 stores), which would take approximately 30 minutes to one hour. FD OPCO management and
28 employees were aware that the system wouldn’t allow employees to punch in before their

1 scheduled start time. FD OPCO managers Arci or Dayanne would inform Plaintiff that they would
2 fix his hours later, which never happened. Plaintiff would also clock out at the end of his shift and
3 continue to perform tasks such as cleaning and prepping food (approximately 30 to 45 minutes).
4 FD OPCO has failed to compensate Plaintiff and the Aggrieved Employees for all of this work
5 performed off-the-clock. Furthermore, to the extent Plaintiff and the Aggrieved Employees have
6 worked through their meal periods and those meal periods were interrupted, they were not
7 compensated for that time, which would be akin to a minimum wage violation.

8 15. Due to the above “off the clock” violations, FD OPCO has failed to pay Plaintiff
9 and the Aggrieved Employees properly-calculated overtime wages. Plaintiff’s and the Aggrieved
10 Employees’ actual work hours, which included the “off the clock” work as described above,
11 entitled them to overtime, however, it was not company policy to keep accurate track of all hours
12 worked and to pay employees, like Plaintiff, the accurate amount of overtime, especially since
13 the “off the clock” work was not factored into the equation. For example, throughout his
14 employment Plaintiff worked double shifts and would often work seven (7) straight days.
15 However, FD OPCO management would instruct him not to punch out and would carry over those
16 hours to the following week in order to avoid paying Plaintiff overtime and/or doubletime.
17 Furthermore, any incentive payments and/or bonus payments were not factored into the
18 employees’ regular rate of pay for purposes of deciphering the correct overtime rate of pay. In
19 addition, any bonus and/or incentive payments were not factored into the correct meal and rest
20 break premium pay per *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858, 863.

21 16. In addition, Plaintiff and the other Aggrieved Employees were not given accurate
22 tips to which they were entitled in violation of California Labor Code Section 351 and 353.

23 17. FD OPCO has failed to provide all compliant meal periods and authorize and
24 permit all compliant rest periods to which Plaintiff and the other Aggrieved Employees were
25 entitled. Plaintiff is entitled to take off-duty, uninterrupted 30-minute meal periods before the fifth
26 hour of work and to take uninterrupted 10-minute rest periods for every four hours or major
27 fraction thereof worked. Due to the press of business, Plaintiff and the other Aggrieved Employees
28 would not be able to take timely, uninterrupted meal periods before the 5th hour worked. FD

1 OPCO instructed Plaintiff to clock out of his shifts before the fifth hour of work (to avoid paying
2 a meal period premium) and continue working. When Plaintiff tried to take a meal period, FD
3 OPCO management or the other staff would interrupt him with requests for assistance or questions
4 about work related matters. Moreover, Plaintiff and the other Aggrieved Employees would have
5 to take their meal periods in the restaurant where naturally patrons would interrupt them for
6 assistance. Similarly, Plaintiff has never taken his 10-minute rest breaks due to the work load/
7 press of business. Meal and rest breaks were definitively not part of FD OPCO's culture,
8 especially in a fast-paced restaurant environment. On information and belief, FD OPCO did not
9 always provide premium wages to Plaintiff for these meal and rest break violations; if FD OPCO
10 did provide premium wages, they were not paid at the correct rate, as explained above.

11 18. FD OPCO has failed to reimburse Plaintiff and the other Aggrieved Employees
12 for the business expenses they incurred in direct consequence of the discharge of their duties. FD
13 OPCO required Plaintiff and the other Aggrieved Employees to purchase uniform items and use
14 their own personal cell phone to communicate with management concerning work matters and
15 scheduling. FD OPCO did not reimburse Plaintiff and the other Aggrieved Employees for these
16 uniform and mobile phone expenses. Accordingly, FD OPCO was in violation of California Labor
17 Code sections 2800 and 2802.

18 19. FD OPCO has not provided Plaintiff and the other Aggrieved Employees accurate,
19 itemized wage statements. Wage statements must include all hours worked, overtime hours
20 worked, all applicable hourly rates, the correct legal name and correct address of employer entity,
21 gross wages earned, all deductions, net wages earned, reimbursement for business expenses, the
22 correct start and end of the applicable pay period, the employee ID numbers or social security
23 numbers, among other items. Labor Code § 226(a)(2). FD OPCO issued wage statements that
24 inaccurately reflected total hours worked, gross and net wages earned, and the number of hours
25 worked at each hourly rate because of FD OPCO's failure to properly pay wages as explained
26 herein. Labor Code §§ 226(a)(1), (2), (5), (9).

27 20. FD OPCO has also violated Labor Code section 558 and engaged in business
28 practices which violate Business and Professions Code Section 17200.

21. Accordingly, Plaintiff now seeks civil penalties on behalf of himself and the Aggrieved Employees based on Defendants' alleged violations of the California Labor Code and the Wage Order.

FIRST (AND ONLY) CAUSE OF ACTION

CIVIL PENALTIES

(Lab. Code §§ 2698, *et seq.*)

(By Plaintiff, on behalf of himself and the other Aggrieved Employees, against all Defendants)

22. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23. At all relevant times, Plaintiff and the Aggrieved Employees have been non-exempt employees entitled to the protections of both the Labor Code and the Wage Order.

A. FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED AT THE CORRECT RATES OF PAY

24. Section 2(K) of the Wage Order defines "hours worked" 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 work, whether or not required to do so."

25. Section 3 of the Wage Order states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives one and one half (1½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;

(b) Double the employee's regular rate of pay for all hours worked in excess of 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

1 (c) The overtime rate of compensation required to be paid to a nonexempt
2 full-time salaried employee shall be computed by using the employee's
3 regular hourly salary as one fortieth (1/40) of the employee's weekly
4 salary.

5 26. Section 4 of the Wage Order requires an employer to pay non-exempt employees
6 at least the minimum wage set forth therein for all hours worked, which consists of all hours that
7 an employer has actual or constructive knowledge that employees are working.

8 27. Labor Code section 510 states:

9 Eight hours of labor constitutes a day's work. Any work in excess of eight hours
10 in one workday and any work in excess of 40 hours in any one workweek and the
11 first eight hours worked on the seventh day of work in any one workweek shall be
12 compensated at the rate of no less than one and one-half times the regular rate of
13 pay for an employee. Any work in excess of 12 hours in one day shall be
14 compensated at the rate of no less than twice the regular rate of pay for an
15 employee. In addition, any work in excess of eight hours on any seventh day of a
16 workweek shall be compensated at the rate of no less than twice the regular rate of
17 pay of an employee. Nothing in this section requires an employer to combine more
18 than one rate of overtime compensation in order to calculate the amount to be paid
19 to an employee for any hour of overtime work.

20 28. Labor Code section 1194 invalidates any agreement between an employer and an
21 employee to work for less than the minimum wage required under the applicable Wage Order.

22 29. Labor Code section 1197 makes it unlawful for an employer to pay an employee
23 less than the minimum wage required under the applicable Wage Order for all hours worked
24 during a payroll period.

25 30. Labor Code section 1198 makes it unlawful for an employer to employ an
26 employee under conditions that violate the Wage Order.

27 31. In conjunction, these provisions of the Labor Code require employers to pay non-
28 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
worked, including unrecorded hours when the employer knew or reasonably should have known
that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
Cal.4th 575, 585.)

32. At all relevant times during the applicable limitations period, Defendants failed to
compensate Plaintiff and the Aggrieved Employees for all hours worked, including, but not
limited to overtime wages for all overtime hours they worked at the correct rates of pay.

33. Plaintiff is informed and believes and thereon alleges that, at all relevant times,

Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to compensate Plaintiff and the other Aggrieved Employees for all hours worked as required by California law.

B. FAILURE TO PROVIDE MEAL PERIODS

34. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

35. In relevant part, In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

36. In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

1 (B) If an employer fails to provide an employee a meal period in
2 accordance with the applicable provisions of this Order, the
3 employer shall pay the employee one (1) hour of pay at the
4 employee's regular rate of compensation for each work day that
5 the meal period is not provided.

6 37. In relevant part, California Labor Code § 226.7 states:

7 (b) An employer shall not require an employee to work during
8 a meal or rest period mandated pursuant to an applicable
9 statute, or applicable regulation, standard, or order of the
10 Industrial Welfare Commission, the Occupational Safety
11 and Health Standards Board, or the Division of
12 Occupational Safety and Health.

13 (c) If an employer fails to provide an employee a meal period
14 or rest period in accordance with a state law, including, but
15 not limited to, an applicable statute or applicable
16 regulation, standard, or order of the Industrial Welfare
17 Commission, the Occupational Safety and Health
18 Standards Board, or the Division of Occupational Safety
19 and Health, the employer shall pay the employee one
20 additional hour of pay at the employee's regular rate of
21 compensation for each work day that the meal or rest
22 period is not provided.

23 38. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
24 Aggrieved Employees were entitled to uninterrupted meal periods of at least 30 minutes for each
25 day they worked five or more hours. Pursuant to California Labor Code § 512, they were also
26 entitled to a second 30-minute meal period when they worked more than 10 hours in a workday.

27 39. Defendants intentionally failed to provide Plaintiff and the Aggrieved Employees
28 with all required timely 30-minute meal periods free from any work duties in accordance with the
Wage Order.

40. At all relevant times, Defendants failed to provide Plaintiff and the Aggrieved
Employees with all timely and uninterrupted meal periods. Furthermore, Defendants failed to pay
premium wages for days on which they failed to provide Plaintiff and the other Aggrieved
Employees with timely meal periods.

41. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
which resulted in Defendants not providing the and the Aggrieved Employees with all off-duty

meal periods required by California law.

C. FAILURE TO AUTHORIZE AND PERMIT REST BREAKS

42. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

43. In relevant part, Section 12 of the Wage Order states:

Rest Periods:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted as hours worked for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

44. In relevant part, California Labor Code § 226.7 states:

(b) An employer shall not require an employee to work during a meal or rest period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

(c) If an employer fails to provide an employee a meal period or rest period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of

1 compensation for each work day that the meal or rest
2 period is not provided.

3 45. Pursuant to the Wage Order, Plaintiff and the Aggrieved Employees were entitled
4 to be authorized and permitted to take net rest breaks of at least ten minutes for each four-hour
5 period of work, or major fraction thereof.

6 46. Defendants intentionally failed to authorize and permit Plaintiff and the Aggrieved
7 Employees to take all 10-minute rest periods free from any work duties in accordance with the
8 Wage Order.

9 47. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
10 Aggrieved Employees to take all timely rest periods. Furthermore, Defendants failed to pay
11 premium wages to Plaintiff and the Aggrieved Employees for days on which they failed to
12 authorize and permit Plaintiff and the other Aggrieved Employees to take timely rest periods.

13 48. At all relevant times, due to high workload, Defendants failed to authorize and
14 permit Plaintiff and the Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every
15 four hours worked or major fraction thereof. Defendants did not seek an exemption from the rest
16 period protections of the Wage Order from the California Division of Labor Standards
17 Enforcement. Moreover, Defendants failed to pay Plaintiff and the Aggrieved Employees
18 premium wages on workdays they failed to authorize and permit them to take 10-minute rest
19 periods every four hours worked or major fraction thereof.

20 49. Plaintiff is informed and believes and thereon alleges that, at all relevant times
21 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
22 which resulted in Defendants not authorizing and permitting Plaintiff and the Aggrieved
23 Employees to take all rest breaks required by California law.

24 **D. FAILURE TO INDEMNIFY**

25 50. In pertinent part, California Labor Code section 2802(a) states, “An employer shall
26 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
27 consequence of the discharge of his or her duties.”

28 51. Labor Code section 1198 prohibits employers from employing their employees
under conditions prohibited by the Wage Order.

52. At all relevant times during the applicable limitations period, as a condition for
employment, Defendants required Plaintiff and the Aggrieved Employees to incur certain

1 business expenses. These costs include, but are not limited to, uniform items and use of their own
2 personal cell phone to communicate with management concerning work matters and scheduling.
3 However, Defendants did not reimburse Plaintiff and the others for these business expenses.

4 53. Therefore, Defendants failed to indemnify Plaintiff and the Aggrieved Employees
5 for expenditures incurred as a direct consequence of discharging their duties in violation of
6 California Labor Code sections 2800 and 2802.

7 54. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
8 Defendants maintained a policy and/practice, or lack thereof, which resulted in Defendants'
9 failure to indemnify Plaintiff and the Aggrieved Employees for the reasonable expenses they
10 incurred during the course of performing their duties.

11 **E. FAILURE TO PROVIDE ACCURATE AND COMPLETE WRITTEN WAGE**
12 **STATEMENTS**

13 55. Pursuant to California Labor Code § 226(a), Plaintiff and the Aggrieved
14 Employees were entitled to receive, bi-weekly or at the time of each payment of wages, an
15 accurate itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
16 hourly rates in effect during the pay period; and d) the corresponding number of hours worked at
17 each hourly rate by the employee.

18 56. Pursuant to California Labor Code § 226, an employee is deemed to suffer injury
19 if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if
20 the employer fails to provide accurate and complete information as required by California Labor
21 Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement
22 alone one or more of the following:

23 A. The amount of the gross wages or net wages paid to the employee during
24 the pay period or any of the other information required to be provided on the itemized wage
25 statement pursuant to California Labor Code § 226(a);

26 B. Which deductions the employer made from gross wages to determine the
27 net wages paid to the employee during the pay period;

28 C. The name and address of the employer and, if the employer is a farm labor
contractor, as defined in subdivision (b) of Section 1682 of the California Labor Code, the name
and address of the legal entity that secured the services of the employer during the pay period;

D. The name of the employee and only the last four digits of his or his social

1 security number or an employee identification number other than a social security number; and

2 E. The number of piece-rate units earned and the piece rate.

3 57. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
4 means a reasonable person would be able to readily ascertain the information without reference
5 to other documents or information.

6 58. As alleged herein, at all relevant times during the applicable limitations period,
7 Defendants violated California Labor Code section 226 because they did not properly and
8 accurately itemize each employee’s gross wages earned, net wages earned, the total hours worked,
9 the corresponding number of hours worked at each rate by the employee and other requirements
10 of California Labor Code section 226. Defendants failed to state in the wage statements they
11 issued to Plaintiff and the other Aggrieved Employees all their hours worked and wages earned,
12 including, but not limited to, regular and overtime wages for work they performed off-the-clock
13 (as described above).

14 59. Defendants’ failure to provide Plaintiff and the other Aggrieved Employees with
15 accurate wage statements was knowing and intentional. Defendants had the ability to provide
16 Plaintiff and the other Aggrieved Employees with accurate wage statements but intentionally
17 provided wage statements that Defendants knew were not accurate.

18 60. As a result of being provided with inaccurate wage statements by Defendants,
19 Plaintiff and the other Aggrieved Employees have suffered injury. Their legal rights to receive
20 accurate wage statements were violated and they were misled about the amount of wages they
21 had actually earned and were owed. In addition, the absence of accurate information on their wage
22 statements prevented immediate challenges to Defendants’ unlawful pay practices, has required
23 discovery and mathematical computations to determine the amounts of wages owed, has caused
24 difficulty and expense in attempting to reconstruct time and pay records and/or has led to the
25 submission of inaccurate information about wages to state and federal government agencies.
26 Further, Plaintiff and the other Aggrieved Employees were not able to ascertain from the wage
27 statements whether Defendants complied with their obligations under California Labor Code
28 section 226(a).

26 **F. UNTIMELY WAGES DURING EMPLOYMENT**

27 61. Labor Code § 204 states:

28 (a) All wages, other than those mentioned in Section 201,

1 201.3, 202, 204.1, or 204.2, earned by any person in any
2 employment are due and payable twice during each
3 calendar month, on days designated in advance by the
4 employer as the regular paydays. Labor performed
5 between the 1st and 15th days, inclusive, of any calendar
6 month shall be paid for between the 16th and the 26th day
of the month during which the labor was performed, and
labor performed between the 16th and the last day,
inclusive, of any calendar month, shall be paid for
between the 1st and 10th day of the following month. ...

7 (b) (1) Notwithstanding any other provision of this
8 section, all wages earned for labor in excess of the normal
9 work period shall be paid no later than the payday for the
next regular payroll period.

10 (2) An employer is in compliance with the
11 requirements of subdivision (a) of Section 226
12 relating to total hours worked by the employee, if
13 hours worked in excess of the normal work period
14 during the current pay period are itemized as
15 corrections on the paystub for the next regular pay
16 period. Any corrections set out in a subsequently
issued paystub shall state the inclusive dates of
the pay period for which the employer is
correcting its initial report of hours worked.

17 (c) However, when employees are covered by a collective
18 bargaining agreement that provides different pay
19 arrangements, those arrangements shall apply to the
covered employees.

20 (d) The requirements of this section shall be deemed satisfied
21 by the payment of wages for weekly, biweekly, or
22 semimonthly payroll if the wages are paid not more than
23 seven calendar days following the close of the payroll
period.

24 62. Defendants failed to compensate Plaintiff and the Aggrieved Employees for all
25 hours worked at the correct rates of pay, including overtime. Defendants failed to provide Plaintiff
26 and the Aggrieved Employees with all meal and rest periods in compliance with California laws.
27 Defendants also failed to provide Plaintiff and the Aggrieved Employees with all premium wages
28 on workdays they failed to provide them with one or more meal or rest periods in compliance
with California laws. As a result, Defendants failed to timely pay all earned minimum, overtime,

1 and premium wages due during employment within the time periods set by California Labor Code
2 section 204.

3 **G. UNTIMELY FINAL WAGES**

4 63. Labor Code § 201 provides that all earned and unpaid wages of an employee who
5 is discharged are due and payable immediately at the time of discharge.

6 64. Labor Code § 202 provides that all earned and unpaid wages of an employee who
7 quits after providing at least 72-hours notice before quitting are due and payable at the time of
8 quitting and that all earned and unpaid wages of an employee who quits without providing at least
9 72-hours notice before quitting are due and payable within 72 hours.

10 65. By failing to pay earned minimum and premium wages to Plaintiff and the
11 Aggrieved Employees, Defendants failed to timely pay them all earned and unpaid wages in
12 violation of Labor Code § 201 or § 202.

13 66. Plaintiff is informed and believes that Defendants' failures to timely pay Plaintiff
14 and the Aggrieved Employees all of their earned and unpaid wages (described above) have been
15 willful in that, at all relevant times, Defendants have deliberately maintained policies and
16 practices that violate the requirements of the Labor Code and the Wage Order, even though at all
17 relevant times, they have had the ability to comply with those legal requirements.

18 **H. FAILURE TO MAINTAIN ACCURATE EMPLOYMENT RECORDS**

19 67. Labor Code § 1174 states:

20 Every person employing labor in this state shall:

21 ...

22 (c) Keep a record showing the names and addresses of all employees
employed and the ages of all minors.

23 (d) Keep, at a central location in the state or at the plants or establishments
24 at which employees are employed, payroll records showing the hours
25 worked daily by and the wages paid to, and the number of piece-rate
26 units earned by and any applicable piece rate paid to, employees
27 employed at the respective plants or establishments. These records shall
28 be kept in accordance with rules established for this purpose by the
commission, but in any case shall be kept on file for not less than three
years. An employer shall not prohibit an employee from maintaining a
personal record of hours worked, or, if paid on a piece-rate basis, piece-

rate units earned.

68. Labor Code § 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

69. Section 7 of the Wage Order states:

(A) Every employer shall keep accurate information with respect to each employee including the following:

- (1) Full name, home address, occupation and social security number.
- (2) Birth date, if under 18 years, and designation as a minor.
- (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
- (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the Employee.
- (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.
- (6) When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.

70. Labor Code § 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

71. On information and belief, Defendants have willfully failed to maintain the records required by § 1174 and Wage Order, including, but not limited to, the total premium wages earned for missed meal and rest periods, and records pertaining to all unpaid hours worked by Plaintiff and the Aggrieved Employees.

1 72. Accordingly, Plaintiff seeks an award of civil penalties against the Defendants on
2 behalf of himself and all of the other Aggrieved Employees as follows: (1) \$500 for each
3 aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code
4 section 1174.5); and (2) \$100 for each aggrieved employee for each initial violation of Labor
5 Code section 1198, and \$200 for each Aggrieved Employee for each subsequent violation, per
6 pay period (penalties set by Labor Code section 2699(f)(2)).

7 **I. CIVIL PENALTIES SOUGHT**

8 73. During the applicable time period, Defendants violated California Labor Code
9 §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194, 1197, 1198, 2802 and
10 related Labor Code statutes.

11 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
12 behalf of themselves and other current or former employees, to bring a civil action to recover civil
13 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

14 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Aggrieved
15 Employees are entitled to recover civil penalties for each of the Defendants' violations of
16 California Labor Code §§ 201, 202, 203, 204, 226, 226.7, 351, 353, 510, 512, 558, 1174, 1194,
17 1197, 1198, and 2802 during the applicable limitations period in the following amounts:

18 A. For violations of California Labor Code § 204, one hundred dollars
19 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
20 (\$200.00) for each aggrieved employee for each subsequent, willful or intentional violation
21 (penalty amounts established by California Labor Code § 210).

22 B. For violations of California Labor Code § 226, two hundred fifty dollars
23 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per employee
24 for each subsequent violation (penalty amounts established by California Labor Code § 226.3).

25 C. For violations of California Labor Code §§ 510 and 512, fifty dollars
26 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
27 employee was underpaid and one hundred dollars (\$100.00) for each underpaid employee for
28 each pay period for which the employee was underpaid (penalty amounts established by

1 California Labor Code § 558).

2 D. For violations of California Labor Code § 1174, five hundred dollars
3 (\$500.00) for each Aggrieved Employee for each initial violation (penalty amounts established
4 by Labor Code § 1174.5).

5 E. For violations of California Labor Code § 1197, one hundred dollars
6 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two hundred
7 fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per pay period
8 (regardless of whether the initial violations were intentionally committed) (penalty amounts
9 established by California Labor Code § 1197.1).

10 F. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1194,
11 1198, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period for
12 each initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay
13 period for each subsequent violation (penalty amounts established by California Labor Code
14 § 2699(f)(2)).

15 **J. NOTICE TO THE STATE OF CALIFORNIA AND DEFENDANTS**

16 76. Plaintiff has complied with the procedures for bringing suit specified in California
17 Labor Code § 2699.3. By letter dated February 1, 2024, Plaintiff gave written notice by certified
18 mail to the Labor and Workforce Development Agency (“LWDA”) and Defendant of the specific
19 provisions of the California Labor Code alleged to have been violated, including the facts and
20 theories to support the alleged violations. The LWDA has failed to take action in response within
21 65 days of Plaintiff’s notice dated February 1, 2024.

22 77. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
23 Employees are entitled to an award of civil penalties, reasonable attorneys’ fees, and costs in
24 connection with their claims for civil penalties.

25 **PRAYER FOR RELIEF**

26 78. WHEREFORE, Plaintiff, on behalf of himself and the Aggrieved Employees,
27 prays for relief and judgment against Defendants as follows:

28 A. Civil penalties;

B. Costs of suit;

- 1 C. Reasonable attorneys' fees; and
2 D. Such other relief as the Court deems just and proper.

3 **DEMAND FOR JURY TRIAL**

4 Plaintiff, on behalf of himself and all other Aggrieved Employees, hereby demands a jury
5 trial on all issues so triable.

6 Respectfully submitted,

7 Dated: April 10, 2024

MM LAW, APC

8 By: Maralle Messrelian
9 Maralle Messrelian, Esq.
10 Attorney for Plaintiff,
11 JOSUE MARQUEZ, and all others
12 similarly situated
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