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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SONOMA

TOMAS DE JESUS GASPAR and VICTOR
VILLANUEVA, individuals on behalf of
themselves and the State of California, as a
private attorneys general,

Plaintiffs,

v.

GONZALEZ VINEYARD MANAGEMENT,
LLC, a California limited liability company; and
DOES 1 TO 50,

Defendants.

Case Number: 24CV02599

**First Amended PAGA Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
("PAGA") for Violations of California
Labor Code Sections 201, 202, 203, 204,
210, 226, 226.3, 226.7, 256, 510, 512,
1174, 1174.5, 1185, 1194, 1194.2, 1197,
1197.1, 1198, 1198.5, 1199, 2802, 2804,
and Other Provisions of the Labor Code.

1 Plaintiffs Tomas De Jesus Gaspar and Victor Villanueva (collectively “Plaintiffs”), on behalf
2 of themselves and the State of California, as private attorneys general, complain and allege of
3 defendants Gonzalez Vineyard Management, LLC and Does 1 to 50 (collectively, “Defendants”), and
4 each of them, as follows:

5 **I. INTRODUCTION**

6 1. This action is a representative action brought pursuant to the California Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
8 through 2699.6.

9 2. The “PAGA Period” as used herein, is defined as the period from April 26, 2023, and
10 continuing into the present and ongoing.

11 3. This PAGA action is brought on behalf of Plaintiffs, the State of California as private
12 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
13 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
14 “Aggrieved Employees”).

15 4. Plaintiffs are informed and believe and thereon allege that the California Industrial
16 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage Orders
17 13-2001 and/or 14-2001 (the “Applicable Wage Orders”) and possibly others that may be applicable.
18 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Plaintiffs reserve the right to amend or modify the
19 definition of “Applicable Wage Orders” with greater specificity or add additional IWC Wage Orders
20 if additional applicable wage orders are discovered in litigation.

21 **II. JURISDICTION & VENUE**

22 5. This Court has subject matter jurisdiction over all causes of action asserted herein
23 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
24 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
25 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
26 is subject to adjudication in the courts of the State of California.

27 6. This Court has personal jurisdiction over Defendants because Defendants have caused
28 injuries in the County of Sonoma and the State of California through their acts, and by their violation

1 of the California Labor Code and California state common law. Defendants transact millions of dollars
2 of business within the State of California. Defendants own, maintain offices, transact business, have an
3 agent or agents within the County of Sonoma, and/or otherwise are found within the County of Sonoma,
4 and Defendants are within the jurisdiction of this Court for purposes of service of process.

5 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
6 Code of Civil Procedure. Defendants operate within California and do business within Sonoma County,
7 California. The unlawful acts alleged herein have a direct effect on Plaintiffs and all of Defendants'
8 employees identified above within Sonoma County and surrounding counties where Defendants may
9 remotely operate.

10 **III. THE PARTIES**

11 **A. PLAINTIFF**

12 8. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
13 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-exempt
14 hourly employees in the County of Sonoma.

15 9. Plaintiffs bring this action on behalf of themselves and the State of California, as private
16 attorneys general, and on behalf of the following group of aggrieved employees: *All individuals who*
17 *are or were employed by Defendants as non-exempt employees in California during the PAGA Period*
18 (the "Aggrieved Employees").

19 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
20 Defendants during the relevant statutory period.

21 **B. DEFENDANTS**

22 11. Plaintiffs are informed and believe and thereon allege that Defendants were authorized
23 to and doing business in Sonoma County and is and/or was the legal employer of Plaintiffs and the
24 other Aggrieved Employees during the applicable statutory periods. Plaintiffs and the other Aggrieved
25 Employees were, and are, subject to Defendants' policies and/or practices complained of herein and
26 have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203,
27 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198,
28 1198.5, 1199, 2802, 2804, and others that may be applicable; California Business and Professions Code

1 sections 17200 through 17210 (“UCL”); and the Applicable Wage Orders (Cal. Code of Regs., tit. 8,
2 §§ 11130, 11140).

3 12. Plaintiffs are informed and believe, and based thereon allege, that during the PAGA
4 Period, Defendants did (and continue to do) business in the State of California, County of Sonoma.

5 13. Plaintiffs do not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiffs will seek leave from this Court to amend this
8 complaint when such true names and capacities are discovered. Plaintiffs are informed, and believe,
9 and thereon allege, that each of said fictitious defendants, whether individual, partners, or corporate,
10 were responsible in some manner for the acts and omissions alleged herein, and proximately caused
11 Plaintiffs and the other Aggrieved Employees to be subject to the unlawful employment practices,
12 wrongs, injuries, and damages complained of herein.

13 14. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
14 herein, Defendants were and/or are the employers of Plaintiffs and the other Aggrieved Employees. At
15 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
16 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
17 were the agents, representatives, and employees of each and every one of the other Defendants, and at
18 all times herein mentioned were acting within the course and scope of said agency, representation, and
19 employment. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of
20 the acts or omissions complained of herein.

21 15. Plaintiffs are further informed, and believe, and thereon allege, that at all times
22 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
23 existed and now exists a unity of interest and ownership between them such that the individuality and
24 separateness of each of them has ceased. Plaintiffs are further informed, and believe, and thereon allege,
25 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere
26 shells and naked frameworks that their principal uses for the conduct of that Defendant’s own business,
27 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
28 identities as the entities responsible for their ownership, management, and financial interests.

1 16. Plaintiffs are further informed, and believe, and thereon allege, that at all times
2 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
3 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
4 joint venture, partnership, and common enterprise. Further, Plaintiffs are informed, and believe, and
5 thereon allege, that all Defendants were joint employers for all purposes of Plaintiffs and the other
6 Aggrieved Employees.

7 **IV. COMMON FACTS & ALLEGATIONS**

8 17. Plaintiffs and the other Aggrieved Employees (collectively, the “Aggrieved
9 Employees”) are, and were at all relevant times, employed by the Defendants within the State of
10 California.

11 18. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
12 for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
13 in this complaint.

14 19. Specifically, Plaintiffs were employed by Defendants within the statutory PAGA
15 Period, working as hourly, non-exempt field workers for Defendants.

16 **A. MINIMUM WAGE VIOLATIONS**

17 20. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
18 by the IWC, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code
19 section 1194 entitles “any employee receiving less than the legal minimum wage . . . to recover in a
20 civil action the unpaid balance of the full amount of this minimum wage.” Likewise, the Applicable
21 Wage Orders also obligate employers to pay each employee minimum wages for all hours worked.
22 (Cal. Code of Regs., tit. 8, §§ 11130, 11140.) Labor Code section 1198 makes unlawful the employment
23 of an employee under conditions that the IWC Wage Orders prohibit.

24 21. These minimum wage standards apply to each hour that employees work. Therefore, an
25 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
26 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
27 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)
28

1 22. Here, Defendants failed to fully conform their pay practices to the requirements of the
2 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all
3 hours worked including, but not limited to, all hours they were subject to the control of Defendants
4 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Orders.

5 23. Additionally, the Aggrieved Employees were not paid all wages for all hours worked
6 due to Defendants' uniform payroll policies and practices that unfairly rounded employees' wages to
7 the detriment of the Aggrieved Employees. This rounding policy routinely failed to capture the entirety
8 of the hours the Aggrieved Employees worked and was structured in a way that in favored
9 underpayment. (See *See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907.) As
10 a result, the Aggrieved Employees suffered periodic shortages in the hours for which they were
11 compensated. This uncompensated time violated California's requirement that employees be
12 compensated for all hours worked. As a result of this practice, the Aggrieved Employees were not
13 compensated their minimum wages for all hours worked.

14 24. Labor Code sections 1194, subdivision (a), and 1194.2, subdivision (a), provide that an
15 employer who has failed to pay its employees the legal minimum wage is liable to pay those employees
16 the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages
17 due and interest thereon.

18 25. When employees, such as Plaintiffs, are not paid for all hours worked under Labor Code
19 section 1194, they are entitled to recover minimum wages for the time which they received no
20 compensation. (See *Sillah v. Command International Security Services* (N.D. Cal. 2015) 154 F.Supp.3d
21 891 [employees suing for failure to pay overtime could recover liquidated damages under Labor Code
22 section 1194.2 if they also showed they were paid less than minimum wage].)

23 26. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
24 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
25 damages, as follows:

- 26 (1) “For any initial violation that is intentionally committed, one hundred
27 dollars (\$100) for each underpaid employee for each pay period for
28 which the employee is underpaid.”

1 (2) “For each subsequent violation for the same specific offense, two
2 hundred fifty dollars (\$250) for each underpaid employee for each pay
3 period for which the employee is underpaid regardless of whether the
4 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.
5 (a).)

6 27. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for
7 all minimum wages. Accordingly, Plaintiffs are entitled to recover liquidated damages for violations
8 of Labor Code section 1197.1.

9 28. Based upon these same factual allegations, Plaintiffs are likewise entitled to penalties
10 under Labor Code sections 1199.

11 **B. OVERTIME VIOLATIONS**

12 29. Labor Code section 510 requires employers to compensate employees who work more
13 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
14 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
15 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
16 employees at no less than twice the regular rate of pay when an employee works more than twelve
17 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
18 subd. (a).) These rules are also reflected in the Applicable Wage Orders.

19 30. IWC Wage Order 14-2001, section 3(A), is similar, but provides in pertinent part:

20 “(1) Such employees shall not be employed more than ten (10) hours in any
21 one workday or more than six (6) days in any workweek unless the
22 employee receives one and one-half (1½) times such employee’s regular
23 rate of pay for all hours worked over ten (10) hours in any workday and
24 for the first eight (8) hours on the seventh (7th) day of work and double
25 the employee’s regular rate of pay for all hours worked over eight (8) on
26 the seventh (7th) day of work in the workweek.

27 “(2) For employers of more than 25 employees:
28

1 “(a) Starting January 1, 2019, an employee shall not be employed more than
2 nine and one-half (9½) hours per workday or fifty-five (55) hours per
3 workweek unless the employee receives one and one-half (1½) times
4 such employee’s regular rate of pay for all hours worked over nine and
5 one-half (9½) hours in any one workday or more than fifty-five (55)
6 hours in any one workweek.

7 “(b) Starting January 1, 2020, an employee shall not be employed more than
8 nine (9) hours per workday or fifty (50) hours per workweek unless the
9 employee receives one and one-half (1½) times such employee’s regular
10 rate of pay for all hours worked over nine (9) hours in any one workday
11 or more than fifty (50) hours in any one workweek.” (Cal. Code of Regs.,
12 tit. 8, § 11140, subd. 3.)

13 31. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the
14 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the
15 amount provided by Labor Code sections 510 or the Applicable Wage Orders.

16 32. Here, Defendants violated their duty to accurately and completely compensate the
17 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours
18 that entitled them to overtime compensation under the law but were not fully compensated for those
19 hours.

20 33. These actions were and are in clear violation of California’s overtime laws as set forth
21 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of Regs., tit. 8,
22 §§ 11130, 11140.) As a result of Defendants’ faulty policies and practices, the Aggrieved Employees
23 were not compensated for all hours worked or paid accurate overtime compensation.

24 **C. REST BREAK VIOLATIONS**

25 34. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
26 were and are required to provide the Aggrieved Employees with compensated, duty-free rest periods
27 of not less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage
28 Orders, an employer must authorize and permit all employees to take ten minute duty free rest periods

1 for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8, §§ 11130, 11140.)

2 35. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
3 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
4 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
5 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
6 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
7 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
8 factor in all nondiscretionary payments for work performed by the employee, including non-
9 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
10 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
11 Orders set when and for how long the rest period must take place and the Labor Code establishes that
12 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
13 their employees when employers fail to provide rest periods.

14 36. The California Supreme Court has held that, during required rest periods, “employers
15 must relieve their employees of all duties and relinquish any control over how employees spend their
16 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
17 control over employees during rest periods requires that employees be “free to leave the employer’s
18 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
19 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
20 policy:

21 “An employer is required to authorize and permit the amount of rest break time
22 called for under the wage order for its industry. If it does not—if, for example,
23 it adopts a uniform policy authorizing and permitting only one rest break for
24 employees working a seven-hour shift when two are required—it has violated
25 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
26 Cal.4th 1004, 1033.)

27 37. Here, Defendants periodically did not permit the Aggrieved Employees to take
28 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section

1 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM Security Services,*
2 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
3 of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the
4 Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods
5 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
6 unlawful rest period policies/practices. The Aggrieved Employees were often expected and required to
7 continue working through rest periods to meet the expectations Defendants and finish the workday. In
8 some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed
9 to authorize and/or permit a third mandated rest period. As a result, the Aggrieved Employees were
10 periodically unable to take compliant rest periods.

11 38. In such cases where Defendants did not offer the Aggrieved Employees the opportunity
12 to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
13 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410
14 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not
15 conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court,*
16 *supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law
17 but never authorized; if a break is not authorized, an employee has no opportunity to decline to take
18 it.”].)

19 39. In addition to failing to authorize and permit compliant rest periods, the Aggrieved
20 Employees were not compensated with one hour’s worth of pay at their regular rate of compensation
21 when they were not provided with a compliant rest period in accordance with Labor Code section
22 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable
23 Wage Orders.

24 40. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
25 non-exempt employees, rest period premiums and penalties.

26 **D. MEAL BREAK VIOLATIONS**

27 41. Labor Code section 512 and the Applicable Wage Orders require employers to provide
28 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of

1 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
2 more than five hours per day without providing the employee with a meal period of not less than 30
3 minutes”]; Cal. Code of Regs., tit. 8, §§ 11130, 11140 [“No employer shall employ any person
4 for a work period of more than five (5) hours without a meal period of not less than 30 minutes”].)
5 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
6 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
7 employ an employee for a work period of more than 10 hours per day without providing the employee
8 with a second meal period of not less than 30 minutes”].)

9 42. “An on-duty meal period is permitted only when the nature of the work prevents an
10 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
11 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
12 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
13 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
14 have “found that the nature of the work exception applies: (1) where the work has some particular
15 external force that requires the employee to be on duty at all times, and (2) where the employee is the
16 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
17 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
18 to determine whether the nature of the work prevents an employee from being relieved before requiring
19 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
20 p. 946.)

21 43. Here, the Aggrieved Employees were never asked to sign any enforceable document
22 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of
23 “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5
24 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal
25 periods within the first five hours of work for the Aggrieved Employees.

26 44. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
27 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
28 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal

1 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
2 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
3 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit
4 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
5 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
6 *Court*, *supra*, 53 Cal.4th at p. 1033.)

7 45. During the applicable statutory periods here, the Aggrieved Employees were
8 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to
9 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal period
10 policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal
11 periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not
12 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor
13 Code section 512 and the Applicable Wage Orders by failing to advise, authorize, or permit the
14 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
15 shifts.

16 46. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
17 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
19 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Orders further obligate
20 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
21 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
22 Regs., tit. 8, §§ 11130, 11140 [“If an employer fails to provide an employee a meal period in accordance
23 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay
24 at the employee’s regular rate of compensation for each workday that the meal period is not
25 provided.”].) The “regular rate” for these purposes must factor in all nondiscretionary payments for
26 work performed by the employee, including non-discretionary bonuses, commissions, and other forms
27 of wage payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC*
28 (2021) 11 Cal.5th 858, 878.)

1 47. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal
2 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
3 226.7 and the Applicable Wage Orders. Defendants, however, failed to pay the Aggrieved Employees
4 applicable meal period premiums for many workdays that the employees did not receive a compliant
5 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
6 Orders.

7 48. Based on the foregoing, Plaintiffs seek to recover, on behalf of themselves and other
8 non-exempt employees, meal period premiums and penalties.

9 **E. UNTIMELY WAGES DURING EMPLOYMENT**

10 49. Labor Code section 204 expressly requires employers who pay employees on a weekly,
11 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
12 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
13 Labor Code section 204 subject to a penalty of:

14 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
15 pay each employee.

16 “(2) For each subsequent violation, or any willful or intentional violation, two
17 hundred dollars (\$200) for each failure to pay each employee, plus 25
18 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
19 (a).)

20 50. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
21 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
22 subd. (a).)

23 51. Due to Defendants’ failure to pay the Aggrieved Employees the wages described above,
24 along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees
25 within seven calendar days following the close of payroll in accordance with Labor Code section 204
26 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.
27 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure
28 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

1 **F. UNTIMELY WAGES AT SEPARATION**

2 52. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
3 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
4 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
5 of Defendants’ failure to pay the Aggrieved Employees for the wages described above, along with rest
6 and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

7 53. Due to Defendants’ faulty pay policies, those Aggrieved Employees whose employment
8 with Defendants concluded were not compensated for each and every hour worked at the appropriate
9 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were certain
10 at the time of termination within at least seventy-two hours of their resignation and have failed to pay
11 those sums for thirty days thereafter.

12 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

13 54. At all relevant times herein, Defendants were subject to Labor Code section 2802, which
14 states that “an employer shall indemnify his or her employees for all necessary expenditures or losses
15 incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her
16 obedience to the directions of the employer.” The purpose of this section is to “prevent employers from
17 passing along their operating expenses onto their employees.” (*Gattuso v. Harte-Hanks Shoppers, Inc.*
18 (2007) 42 Cal.4th 554, 562.)

19 55. At all relevant times herein, Defendants were subject to Labor Code section 2804, which
20 states that “any contract or agreement, express or implied, made by any employee to waive the benefits
21 of this article or any part thereof, is null and void, and this article shall not deprive any employee or his
22 personal representative of any right or remedy to which he is entitled under the laws of this State.”

23 56. Thus, the Aggrieved Employees were and are entitled to reimbursement for the expenses
24 they incurred during the course of their duties. The duty to reimburse even extends to the use of
25 equipment the employee may already own and would be required to pay for anyway. (*Cochran v.*
26 *Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold question in this case
27 is this: Does an employer always have to reimburse an employee for the reasonable expense of the
28 mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in

1 which the employee incurred an extra expense that he or she would not have otherwise incurred absent
2 the job? The answer is that reimbursement is always required. Otherwise, the employer would receive
3 a windfall because it would be passing its operating expenses on to the employee.”].)

4 57. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary
5 expenditures incurred as a direct consequence and requirement of performing their job duties, including
6 the costs associated with their tools they required to perform their work. Consequently, Defendants
7 failed to comply with Labor Code section 2802.

8 **H. WAGE STATEMENT VIOLATIONS**

9 58. Defendants also failed to provide accurate itemized wage statements in accordance with
10 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
11 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
12 statement in writing showing:

- 13 (1) The gross wages earned;
- 14 (2) The total hours worked by the employee;
- 15 (3) The number of piece-rate units earned and any applicable piece rate if
16 the employee is paid on a piece rate basis;
- 17 (4) All deductions, provided that all deductions made on written orders of
18 the employee may be aggregated and shown as one item;
- 19 (5) The net wages earned;
- 20 (6) The inclusive dates of the period for which the employee is paid;
- 21 (7) The name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number;
- 24 (8) The name and address of the legal entity that is the employer; and
- 25 (9) All applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the
27 employee.
28

1 59. Due to Defendants' failure to pay the Aggrieved Employees properly as described
2 above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours
3 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
5 Code section 226, subdivisions (a)(1), (2), (5), and (9).

6 60. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
7 intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in
8 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing
9 the Aggrieved Employees with wage statements required by California law but nevertheless failed to
10 correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d
11 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226
12 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other
13 employees paid on commission” even though it believed that employees paid solely on commission or
14 commission and salary “are exempt and therefore we do not record hours on a wage statement.”].)

15 **I. RECORDKEEPING VIOLATIONS**

16 61. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
17 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
18 part, as follows:

19 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
20 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
21 violation in an initial citation and one thousand dollars (\$1,000) per employee
22 for each violation in a subsequent citation, for which the employer fails to
23 provide the employee a wage deduction statement or fails to keep the records
24 required in subdivision (a) of Section 226. The civil penalties provided for in
25 this section are in addition to any other penalty provided by law.” (Lab. Code, §
26 226.3, emphasis added.)

27 62. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
28 Defendants, to:

1 “Keep, at a central location in the state or at the plants or establishments at which
2 employees are employed, payroll records showing the hours worked daily by
3 and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments. These records shall be kept in accordance with rules established
6 for this purpose by the commission, but in any case shall be kept on file for not
7 less than three years. An employer shall not prohibit an employee from
8 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
9 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

10 63. As explained in detail above, Defendants failed to provide the Aggrieved Employees
11 with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
12 track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records
13 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a),
14 and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are
15 “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

16 64. The failure to accurately track hours worked also resulted in a failure of Defendants to
17 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
18 including Plaintiffs, in violation of Labor Code section 1174, subdivision (d).

19 **V. EXHAUSTION OF REMEDIES**

20 65. Plaintiffs have fully and completely exhausted administrative remedies under PAGA
21 prior to proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA notice
22 online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by certified mail
23 to Defendants setting forth the facts and theories of the violations alleged against Defendants, as
24 prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

25 66. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA by
26 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
27 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
28 postmark date of the PAGA notice. Plaintiffs are therefore entitled to commence and proceed with a

1 civil action pursuant to Labor Code section 2699.

2 **VI. CAUSES OF ACTION**

3 **First Cause of Action**

4 *Penalties Pursuant to PAGA for Violations of California Labor Code Sections 201,*
5 *202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194,*
6 *1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the*
7 *Labor Code*
8 *(Against All Defendants)*

9 67. Plaintiffs reallege and incorporate by reference all previous paragraphs.

10 68. Based on the above allegations incorporated by reference, Defendants violated Labor
11 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194,
12 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the
13 Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11130, 11140), and others that may be
14 applicable.

15 69. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code sections
16 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,
17 226, 226.3, 226.7, 256, 510, 512, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
18 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code of Regs.,
19 tit. 8, §§ 11130, 11140), and others that may be applicable.

20 70. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
21 Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
22 of trial subject to the following formula:

23 A. \$100 for the initial violation per employee per pay period; and

24 B. \$200 for each subsequent violation per employee per pay period.

25 71. These penalties must be allocated seventy-five percent to the Labor and Workforce
26 Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties
27 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
28 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*

1 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
2 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
3 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
4 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
5 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that “PAGA
6 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
7 different Labor Code violations.”], internal quotation marks omitted).

8 72. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs and
9 all Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code
10 section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants’ violations of
11 Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15
12 Cal.App.5th at pp. 780, 788.)

13 73. For violations of Labor Code section 226, subdivision (a), Plaintiffs seek the default
14 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
15 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
16 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
17 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
18 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
19 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiffs and the
20 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
21 seek default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
22 subdivision (e).

23 74. Labor Code section 210 provides that “in addition to, an entirely independent and apart
24 from, any other penalty provided in this article, every person who fails to pay the wages of each
25 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
26 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
27 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
28 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty

1 compensation policies and practices, Plaintiffs and the Aggrieved Employees are also entitled to
2 recover penalties under Labor Code section 210 through PAGA.

3 75. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
4 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
5 intentionally committed for each underpaid employee for each pay period for which the employee is
6 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
7 offense for each underpaid employee for each pay period for which the employee is underpaid
8 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
9 to the extent permitted by law, Plaintiffs and the Aggrieved Employees are entitled to recover pursuant
10 to Labor Code section 1197.1.

11 76. Plaintiffs were compelled to retain the services of counsel to file this action to protect
12 their interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties
13 owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs, which Plaintiff is also
14 entitled to recover under Labor Code section 2699, subdivision (g)(1).

15 **VII. PRAYER FOR RELIEF**

16 Plaintiffs pray for judgment for themselves and for all others on whose behalf this suit is brought
17 against Defendants, as follows:

- 18 1. For the failure to maintain accurate employment records, penalties pursuant to Labor
19 Code sections 226.3, 1174.5, and others that may be applicable;
 - 20 2. For the claim of penalties pursuant to PAGA and other provisions of the California
21 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
22 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
23 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
24 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
25 available under Labor Code section 210;
 - 26 3. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
27 and Civil Code sections 3287 and 3289;
- 28

- 1 **4.** On all causes of action for which attorneys' fees may be available, for attorneys' fees
- 2 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
- 3 section 1021.5, and others as may be applicable;
- 4 **5.** For an order enjoining Defendants, and each of them, and their agents, servants, and
- 5 employees, and all persons acting under, in concert with, or for them, from acting in
- 6 derogation of any rights or duties adumbrated in this complaint; and
- 7 **6.** For such other and further relief, this Court may deem just and proper.

8 Dated: July 22, 2024

MELMED LAW GROUP P.C.



JONATHAN MELMED

Attorneys for Plaintiffs and the Aggrieved
Employees

PROOF OF SERVICE
STATE OF CALIFORNIA, LOS ANGELES COUNTY

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, California 90067.

I declare that on the date hereof, July 22, 2024, I served the foregoing document(s) described as:

First Amended PAGA Representative Action Complaint

By causing a true copy thereof to be sent to the following individuals and/or parties:

Laura Reich, Esq.

laura@rosascolawgroup.com

Erica Rosasco, Esq.

erica@rosascolawgroup.com

ROSASCO LAW GROUP

6540 Lonetree Blvd., Ste. 100

Rocklin, California 95765

Office: (916) 672-6552

Fax (916) 672-6563

[XX] BY ELECTRONIC TRANSMISSION. Pursuant to CCP section 1010.6(e), I caused such document to be served on this date by electronic transmission in accordance with standard procedures and to the email address listed. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on July 22, 2024, in Los Angeles, California.



Sandra Garcia