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All Aggrieved Employees

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SUPERIOR COURT OF CALIFORNIA

COUNTY OF LOS ANGELES

DANIEL MATTHEW FERGUSON,
individually in his representative capacity and
on behalf of other persons similarly situated,

Plaintiff,

vs.

GEP CENCAST, LLC, a foreign limited
liability company; and **DOES 1 through 50**,
inclusive,

Defendants.

Case No.: **24STCV16221**

Unlimited Civil
Amount Demanded exceeds \$25,000

**REPRESENTATIVE ACTION FOR CIVIL
PENALTIES UNDER THE PRIVATE
ATTORNEYS GENERAL ACT OF 2004**
[Labor Code §2698, et seq.]

Plaintiff Daniel Matthew Ferguson (“Plaintiff”) brings this representative enforcement action in his representative capacity against Defendant GEP Cencast, LLC (“Defendant”), and DOES 1 through 50, inclusive, (collectively, “Defendants”), on the following grounds:

INTRODUCTION

1. Plaintiff brings this representative enforcement action under the Private Attorneys General Act of 2004 (codified in California Labor Code §§ 2698 et seq., “PAGA”) on behalf of himself and all other current or former non-exempt Background Actor employees of Defendants in California who are not subject to any collective bargaining agreement and who suffered at least one or more of the Labor Code violations alleged herein within the applicable statute of limitations up to the time this action is brought to trial (referred to herein as “Aggrieved Employees”).

2. Plaintiff alleges that during the relevant time period Defendants engaged in wage and hour violations under the California Labor Code (“Labor Code”) and the Industrial Welfare Commission (“IWC”) Wage Orders, as follows:

- a. Failure to provide complaint meal periods and/or proper compensation;
- b. Failure to provide compliant rest breaks and/or proper compensation;
- c. Failure to pay all minimum, regular, and overtime wages;
- d. Failure to reimburse for all business expenses;
- e. Failure to maintain true and accurate records;
- f. Failure to provide accurate itemized wage statements; and
- g. Failure to timely pay all wages due.

3. Plaintiff alleges that Plaintiff brings this PAGA representative action against Defendants on behalf of himself and all other Aggrieved Employees of Defendants in California seeking PAGA penalties, but only those civil penalties that are required to be shared with the California Labor and Workforce Development Agency (“LWDA”) and no individual relief or underpaid wages, pursuant to Labor Code sections 201-203, 204, 210, 218.5, 218.6, 223, 225.5, 226, 226(e), 226.7, 246, 510, 512, 558, 558.1, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,

1 and 2699, 2802, IWC Wage Order 12-2001 §§ 3-4, 7, 9, and 11-12.

2 4. By and through this representative enforcement action, Plaintiff seeks to recover
3 all available remedies including, but not limited to, civil penalties, reasonable attorneys' fees
4 and litigation costs, as provided under California law.

5 5. All allegations in this Compliant are based upon information and belief except
6 those allegations specifically pertaining to Plaintiff and/or his counsel, which are based upon
7 personal knowledge. Each allegation in this Compliant has evidentiary support and/or is likely
8 to have evidentiary support after reasonable opportunity for further investigation and formal
9 discovery.

10 6. Plaintiff reserves the right to name additional representatives throughout the State
11 of California.

12 **JURISDICTION AND VENUE**

13 7. This Court has jurisdiction over this action pursuant to California Code of Civil
14 Procedure ("Code of Civil Procedure") § 410.10 and Labor Code §§ 2698 et seq. Pursuant to §§
15 2698 et seq., Plaintiff brings this action, in his representative capacity, on behalf of himself and
16 all other Aggrieved Employees

17 8. This Court has personal jurisdiction over Defendants because Defendants
18 conduct business in the state of California and has caused injuries in the county of Los Angeles
19 County, as well as throughout the state of California, through its acts, omissions, and violations
20 of the Labor Code and relevant IWC Wage Order.

21 9. Venue is proper in Los Angeles County Court pursuant to Cal. Civ. Proc. Code §§
22 395, 395.5 because Defendants maintain offices, transact business, and/or has an agent in the
23 County of Los Angeles and Defendants are otherwise within this Court's jurisdiction for
24 purposes of service of process. The unlawful acts alleged herein arose in the County of Los
25 Angeles and have a direct effect on Plaintiff and other Aggrieved Employees within the State of
26 California and the County of Los Angeles. On information and belief, Defendants employ
27 numerous individuals throughout the County of Los Angeles and the State of California.

PARTIES

10. Plaintiff is a former non-exempt employee of Defendant, who worked as a non-exempt “Background Actor” on April 26, 2023.

11. Plaintiff is currently a resident of Los Angeles.

12. Plaintiff earned an hourly wage of \$16.50 per hour.

13. Plaintiff is an “aggrieved employee” pursuant to the definition of Labor Code Section 2699(c) because he was employed by Defendants and suffered multiple violations committed by Defendant.

14. At all relevant times, Plaintiff and, on information and belief, other Aggrieved Employees of Defendants in California, were subject to the same policies, practices, and procedures governing their employment and their payment of wages and hours worked.

15. Defendant GEP Cencast, LLC is organized under the laws of the State of Delaware and conducts business in California. Defendant is doing business throughout the State of California, including the County of Los Angeles.

16. Defendants’ wrongful conduct, as herein alleged, occurred in Los Angeles County and in various counties throughout the State of California.

17. Plaintiff is informed and believes, and thereon alleges, that Defendant GEP Cencast, LLC is, and at all relevant times was, authorized to do business and did business in the State of California, and was Plaintiff’s and Aggrieved Employees’ “employer” as defined in and subject to the Labor Code and the Applicable Wage Order.

18. Each of the fictitiously named Defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 through 50, inclusive, are presently unknown to Plaintiff. Plaintiff will amend this Complaint, setting forth the true names and capacities of these fictitiously named Defendants when their true names are ascertained. Plaintiff is informed and believes, and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

19. Plaintiff and all other Aggrieved Employees are, and at all relevant times were,

employees of each Defendant, including DOES 1 through 50, within the meanings set forth in the Labor Code and the Applicable Wage Order.

20. Defendants, including DOES 1 through 50, are Plaintiff's employers or persons acting on behalf of Plaintiff's employers, within the meaning of Labor Code section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 on the Labor Code or any provision regulating hours and days of work in any order of the IWC and, as such, are subject to civil penalties for each underpaid employee, as set forth in section 558, at all relevant times.

21. Defendants, including DOES 1 through 50, are Plaintiff's employers, or persons acting on behalf of Plaintiff's employers, within the meaning of Labor Code section 558.1, who violated or caused to be violated at least one of the provisions regulating minimum wages or hours and days of work in an order of the IWC, or who violated or caused to be violated at least one of sections 203, 226, 226.7, 1193.6, 1194, or 2802 of the Labor Code and, as such, are subject to civil penalties for each underpaid employee, as set forth in section 558.1, at all relevant times.

22. Defendants, including DOES 1 through 50, are Plaintiff's employers or persons acting on behalf of Plaintiff's employers either individually or as officers, agents, or employees of another person, within the meaning of Labor Code section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

23. At all relevant times, each Defendant, whether named or fictitious, was the agent, employee or other person acting on behalf of each other Defendant, and, in participating in the acts alleged in this Complaint, acted within the scope of such agency or employment and ratified the acts of the other.

24. Each Defendant, whether named or fictitious, exercised control over Plaintiff's wages, working hours, and/or working conditions.

25. Each Defendant, whether named or fictitious, acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy,

and the acts of each Defendant are legally attributed to the other Defendants.

26. Each Defendant, whether named or fictitious, was the alter ego of each of the other Defendants at all relevant times herein.

27. A unity of interest and ownership between each Defendant, whether named or fictitious exists such that all Defendants acted as a single employer of Plaintiff and all other Aggrieved Employees.

GENERAL ALLEGATIONS

28. Plaintiff is a former employee of Defendants who worked as a “Background Actor” on April 26, 2023.

29. Defendant GEP Cencast, LLC is a Delaware limited liability company doing business in California. Plaintiff worked for Defendants on the show, “Curveball” in Los Angeles County, California.

30. Plaintiff earned an hourly rate of \$16.50 and worked for 8 hours.

31. Plaintiff also earned and was paid an additional \$5 for performing work that involved smoke (referred to on his wage statement or voucher as “SMOKE”). The \$5 payment was non-discretionary and, as such, was required to be factored into the calculation of Plaintiff’s regular rate of pay for the payment of his overtime and double time wages and into the calculation of Plaintiff’s regular rate of compensation for the payment of his meal and rest period premiums.

32. Section 11 of the applicable Wage Orders provides: “If an employer fails to provide an employee a meal 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 meal period is not provided.” See, e.g., Wage Order 12-2001(11)(C), (12)(B) (same re rest periods) (emphasis added); *see also* Labor Code § 226.7(c) (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, ..., the employer shall pay the employee one additional hour of pay at the employee’s **regular rate of compensation** for each work day that the meal or rest period is not

provided.” (Emphasis added)).

33. During the relevant period, Defendants paid premium wages to Plaintiff and other Aggrieved Employees for violations of the California’s meal and rest break laws. For example, because Plaintiffs experienced a meal period violation due to Defendants’ failure to provide them with a compliant meal period, Defendants paid them one meal period premium (reflected on their wage statement or voucher as “MEAL”) in the unblended rate hourly rate.

34. Defendants were required to factor the non-discretionary bonus payment into the calculation of Plaintiff’s regular rate of compensation for the payment of their meal period premium.

35. However, Defendants paid Plaintiff and other Aggrieved Employees one hour of pay at the employee’s base hourly rate when compensating those employees for violations of the meal and rest period requirements, including in periods when the employee earned Incentive Pay required to be factored into an employee’s regular rate of compensation.

36. On information and belief, during the relevant period, Defendants have failed to factor other forms of Incentive Pay into the regular rates of compensation for the payment of premium wages to persons employed as background actors.

37. At all times throughout Plaintiff’s employment, Plaintiff was classified as a non-exempt employee and was to be compensated on an hourly basis at all relevant times. On information and belief, other Aggrieved Employees were classified as non-exempt employees and were compensated on an hourly basis during the relevant time period.

38. On information and belief, Plaintiff and other Aggrieved Employees of Defendants have been subject to the same policies, practices, and procedures governing the control and payment of wages and hours worked and have been denied specific rights afforded to them under the California Labor Code and Applicable Wage Order.

39. Plaintiff and, on information and belief, other Aggrieved Employees of Defendants regularly work shifts in excess of five hours, but Defendants have failed to provide them with compliant off-duty meal periods before the commencement of their sixth hour of

work, as required by Labor Code section 512 and the Meal Periods section of the Applicable Wage Order.

40. Defendants maintained the policy and practice of not providing Plaintiff and, on information and belief, other Aggrieved Employees with legally compliant meal periods, even though Plaintiff and other Aggrieved Employees were classified as non-exempt employees and worked more than five (5) hours during their workday.

41. For example, although Defendants purported to give Plaintiff and other Aggrieved Employees a 60-minute uninterrupted meal period, Plaintiff and other Aggrieved Employees were often required to work through their meal periods and were unable to take 30-minute off-duty, uninterrupted meal breaks and rest breaks because they were not relieved of all duties and were required to stay on-duty to have working lunches.

42. Moreover, even though Plaintiff and other Aggrieved Employees took interrupted, on-duty, and/or short meal breaks, the Defendants instructed Plaintiff and other Aggrieved Employees to record a 60-minute meal period on their timekeeping records. As a result, Defendants failed to pay Plaintiff and other Aggrieved Employees at least minimum wages and/or overtime wages for the time spent working during on-duty meal periods, but illegally deducted a full hour of work from Plaintiff's and other Aggrieved Employees' time records.

43. Plaintiff and, on information and belief, other Aggrieved Employees of Defendants did not sign a valid on-duty meal period agreement at any point during their employment with Defendants, nor did they properly waive any of their meal periods.

44. Despite not providing employees with all required meal periods, Defendants have failed to pay Plaintiff and, on information and belief, other Aggrieved Employees a premium wage equivalent to one hour of pay at their regular rate of pay for all the times that Defendants have failed to provide them with compliant meal periods in accordance with the Meal Periods section of the Applicable Wage Order and Labor Code section 226.7.

45. The nature of Plaintiff's and other Aggrieved Employees' duties did not prevent

1 them from being relieved of all duties for a 30-minute, off-duty meal period.

2 46. Thus, as a result of Defendants' illegal policies, Plaintiff and, on information and
3 belief, other Aggrieved Employees were denied the opportunity to take legally compliant meal
4 periods, in violation of the applicable Wage Order.

5 47. Plaintiff and, on information and belief, other Aggrieved Employees of
6 Defendants regularly work shifts of at least three and a half hours long; however, for the same
7 reasons that Defendants fail to provide Plaintiff and other Aggrieved Employees with compliant,
8 off-duty meal period, Defendants also failed to provide Plaintiff and other Aggrieved Employees
9 with compliant, off-duty rest periods of at least ten minutes for every four-hour work period, or
10 major fraction thereof.

11 48. Thus, Defendants had a pattern and practice of failing to authorize and permit
12 Plaintiff and, on information and belief, other Aggrieved Employees to take legally compliant
13 rest periods of at least ten minutes for every four-hour work period, or major fraction thereof.
14 Therefore, as a result of Defendants' illegal policies, Plaintiff and, on information and belief,
15 other Aggrieved Employees were not authorized or permitted to take legally compliant rest
16 periods, in violation of the applicable Wage Order.

17 49. Although Plaintiff and, on information and belief, other Aggrieved Employees'
18 meal and rest periods were regularly missed, cut short, and/or on duty, Defendants did not
19 compensate Plaintiff and, on information and belief, other Aggrieved Employees an additional
20 hour of pay at their applicable regular rate of pay on those shifts that Plaintiff and other
21 Aggrieved Employees were not authorized or permitted to take a compliant meal or rest periods,
22 in violation of Labor Code section 226.7.

23 50. Plaintiff and, on information and belief, other Aggrieved Employees regularly
24 worked more than eight hours a day and/or more than forty hours a week and/or seven
25 consecutive days in a workweek.

26 51. Defendants failed to properly pay Plaintiff and, on information and belief, other
27 Aggrieved Employees at least minimum, regular, and overtime wages owed for all time suffered

1 or permitted to work, and reimbursement for all business expenses, in violation of the Labor
2 Code, because Defendants required Plaintiff and, on information and belief, other Aggrieved
3 Employees to perform work while off-the-clock during their meal breaks as discussed above.
4 Despite the fact that all time spent performing duties while clocked out was compensable work
5 hours and business expenses were reimbursable because Plaintiff and, on information and belief,
6 other Aggrieved Employees were subject to the control of their employer during this working
7 time, and Defendants were required to compensate Plaintiff and other Aggrieved Employees
8 accordingly, Defendants did not count all of this time as hours worked nor did they track
9 employee expenses and did not provide proper compensation.

10 52. In addition, Plaintiff and other Aggrieved Employees were not paid all minimum,
11 regular, and overtime wages. Although Plaintiff and other Aggrieved Employees routinely
12 worked in excess of eight hours per day and/or 40 hours per week, Defendants failed to maintain
13 accurate records and instead instructed them to record only a uniform number of hours worked
14 each day and thus failed to pay them for any overtime hours worked. Defendants also did not pay
15 Plaintiff and other Aggrieved Employees for all hours permitted and suffered to work because
16 Plaintiff and other Aggrieved Employees to work during off hours which they were instructed
17 not to record and monitor their phones at all times.

18 53. Further, Defendants failed to properly pay Plaintiff and, on information and
19 belief, other Aggrieved Employees all minimum, regular, and overtime wages owed because
20 Plaintiff and, on information and belief, other Aggrieved Employees were required to work off
21 the clock as discussed above.

22 54. Despite the fact that all time spent performing duties while clocked out was
23 compensable work hours because Plaintiff and, on information and belief, other Aggrieved
24 Employees were subject to the control of their employer during this working time, and
25 Defendants were required to compensate Plaintiff and other Aggrieved Employees accordingly,
26 Defendants did not count all of this time as hours worked and did not provide proper
27 remuneration. As a result, Plaintiff and Aggrieved Employees were not compensated for all

1 hours worked and under the control of Defendants, as required by Labor Code sections 223, 510,
2 1194, and 1197, and the Minimum Wages and Hours and Days of Work sections of the
3 Applicable Wage Order.

4 55. Defendants have failed to reimburse Plaintiff and, on information and belief, other
5 Aggrieved Employees for business expenses. In particular, Plaintiff and other Aggrieved
6 Employees were required to use their personal cell phones in the course of their job duties
7 without providing reimbursement.

8 56. As a direct consequence of Defendant's illegal policies, Defendants did not keep
9 accurate records of the actual hours that Plaintiff and, on information and belief, other Aggrieved
10 Employees were under the control of the Defendants, as well as all wages earned. On
11 information and belief, Defendants failed to keep accurate records of Plaintiff's and other
12 Aggrieved Employees' hours worked when Defendants failed to record the proper beginning and
13 ending of each work and meal period, in addition to the total hours worked during the pay
14 period, among others.

15 57. Defendants similarly failed to provide Plaintiff and, on information and belief,
16 other Aggrieved Employees with accurate itemized wage statements as required by Labor Code
17 section 226, 226.3, 246, 248.5, and 1198. Plaintiff and, on information and belief, other
18 Aggrieved Employees have not been properly compensated by Defendants for all hours worked
19 and have not been paid all compensation due and owing, including all minimum, regular, and
20 overtime wages, and meal and rest period premium wages. As a result, the wage statements
21 issued by Defendants do not include the correct amount of gross and net wages earned, total
22 hours worked by the employee, and all applicable hourly rates in effect during the pay period and
23 the corresponding number of hours worked at each hourly rate by the employee as required
24 under Labor Code section 226. For example, during the applicable statutory period, Defendants
25 failed to furnish Plaintiff and, on information and belief, other Aggrieved Employees with
26 itemized wage statements that included the correct total hours worked, the correct amount of
27 gross and net wages earned, and the correct applicable hourly rates and corresponding number of
28

1 hours worked at each hourly rate. As a result of Defendants' failure to maintain accurate
2 records, the employees were deprived of the ability to know, understand, and question the
3 calculations, rate of pay, and hours used to calculate the wages paid by Defendants.

4 58. On information and belief, the wage statement omissions and inaccuracies were
5 not a result of an isolated and unintentional payroll error due to an inadvertent mistake, but rather
6 a result of knowing and intentional omissions by Defendants. As a result of these omissions and
7 inaccuracies, Plaintiff and, on information and belief, other Aggrieved Employees were not
8 promptly and easily able to determine the correct hours worked and/or determine the accurate
9 wages due and owing without reference to other documents and information.

10 59. Finally, to this date, Defendants have not paid Plaintiff and, on information and
11 belief, other Aggrieved Employees all wages owed, including all minimum, regular, and
12 overtime wages, as well as meal and rest period premium wages, and as a result, has failed to pay
13 timely wages pursuant to Labor Code sections 201, 202 and 204.

14 60. Defendants failed to pay Plaintiff and, on information and belief, other Aggrieved
15 Employees of Defendants all wages due during their employment because Defendants did not
16 pay Plaintiff and other Aggrieved Employees all minimum, regular, and overtime wages owed,
17 as well as all meal and rest period premium wages owed, within the time required by Labor Code
18 section 204.

19 61. Defendants similarly maintained a pattern and practice of failing to pay Plaintiff
20 and other Aggrieved Employees all wages due and owed at the time of their separation of
21 employment within the time specified by Labor Code sections 201 and 202 because Defendants
22 failed to pay Plaintiff and, on information and belief, other Aggrieved Employees all wages due
23 and owed at the time of termination of their employment.

24 62. Based on the foregoing violations of the Labor Code and the applicable IWC
25 Wage Order, Defendants engaged in unfair business practices in California and willingly and
26 knowingly engaged in an employment pattern and practice that violated Business & Professions
27 Code section 17200 et seq. Plaintiff and, on information and belief, other Aggrieved Employees

suffered damages due to Defendants’ unfair, unlawful, and/or fraudulent actions.

PAGA REPRESENTATIVE ACTION DESIGNATION

63. Plaintiff re-alleges and incorporates by reference paragraphs 1-62, inclusive, as if fully set forth herein.

64. The first Cause of Action alleged herein is appropriately suited for a Labor Code Private Attorneys General Act of 2004 (“PAGA”) action because:

- a. Pursuant to California Labor Code section 2699(a), any provision of the Labor Code “that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in section 2699.3.”
- b. This action involves allegations of violations of provisions of the California Labor Code that provide or do not provide for a civil penalty to be assessed and collected by the LWDA or any departments, divisions, commissions, boards, agencies or employees;
- c. Plaintiff is an “aggrieved employee” because he was employed by Defendants and had several violations committed against him;
- d. On April 23, 2024, Plaintiff satisfied the procedural requirements of section 2699.3 by serving the LWDA to Defendants via Certified Mail with his notice for wage and hour violations and penalties, including the facts and theories to support each violation.
- e. More than 65 days have passed since Plaintiff served notice via Certified Mail to the LWDA and his employers. As a result, Plaintiff satisfied all the administrative requirements to pursue civil penalties against Defendants pursuant to Labor Code section 2698, et seq.

- 1 f. Plaintiff filed this action pursuant to Labor Code section 2699(a) and (f), on
2 behalf of himself and all other Aggrieved Employees of Defendants to recover
3 civil penalties, as well as unpaid wages under Labor Code section 558, which
4 are to be paid to the affected employees.
- 5 g. Defendants were Plaintiff's employers or persons acting on behalf of Plaintiff's
6 employer, within the meaning of Labor Code section 558, who violated or
7 caused to be violated, a section of Part 2, Chapter 1 of the Labor Code or any
8 provision regulating hours and days of work in any order of the IWC and, as
9 such, is subject to civil penalties for each underpaid employee, as set forth in
10 section 558, at all relevant times.
- 11 h. Plaintiff seeks to recover all applicable civil penalties under PAGA, but only
12 those civil penalties that are required to be shared with the LWDA and no
13 individual relief or underpaid wages, on behalf of himself and all other
14 Aggrieved Employees pursuant to Labor Code sections 558, 558.1, and 1197.1.

15 **FIRST CAUSE OF ACTION**

16 **REPRESENTATIVE CLAIMS UNDER THE CALIFORNIA LABOR CODE**
17 **PRIVATE ATTORNEYS GENERAL ACT**

(Labor Code section 2698, et seq.)

18 (Alleged By Plaintiff Individually and On Behalf of All Aggrieved Employees of Defendants
19 Against All Defendants)

20 65. Plaintiff incorporated by reference the allegations set forth in the preceding
21 paragraphs, and makes them part of this First Cause of Action, as if fully set forth herein.

22 66. Pursuant to Labor Code section 2699(a), any provision of the Labor Code that
23 provides for a civil penalty to be assessed and collected by the LWDA or any of its departments,
24 divisions, commissions, boards, agencies, or employees for violation of the code may, as an
25 alternative, be recovered through a civil action brought by an aggrieved employee on behalf of
26 himself or herself and other current or former employees pursuant to the procedures specified in
27 Labor Code section 2699.3.

67. Defendants employed Plaintiff, and Plaintiff had one or more of the alleged violations committed against him. Therefore, Plaintiff is an “aggrieved employee” under PAGA because the alleged violator employed him and he had multiple of the alleged violations committed against him. As such, Plaintiff is properly suited to represent the interests of other Aggrieved Employees in a PAGA Representative action.

68. This cause of action involves allegations of violations of Labor Code §§ 201-203, 204, 210, 223, 224, 225.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 1174, 1174.5, 1174(d), 1194, 1194.2, 1197, 1198, and 2802, which, pursuant to Labor Code §2699.5, provide for a civil penalty to be assessed and collected by the LWDA or recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to the procedures specified in Labor Code § 2699.3.

69. Plaintiff seeks civil penalties pursuant to the PAGA for violations of the following Labor Code provisions:

- a. Failure to provide Plaintiff and all other Aggrieved Employees lawfully compliant meal periods and failure to provide proper meal period premium compensation when no meal period was properly provided in violation of Labor Code sections 226.7, 512, 558, and 1198;
- b. Failure to authorize and permit Plaintiff and all other Aggrieved Employees to take lawfully compliant rest periods and failure to provide a rest period premium when a compliant rest period was not taken in violation of Labor Code section 226.7 and 1198;
- c. Failure to pay Plaintiff and all other Aggrieved Employees all minimum, regular, and overtime wages for all the time they were suffered or permitted to work, engaged in work, and/or were under Defendants’ control, in violation of Labor Code sections 223, 225.5, 510, 558, 1194, 1194.2, 1197, 1197.1, and 1198;
- d. Failure to pay Plaintiff and all other Aggrieved Employees all overtime

wages at the applicable overtime rate of pay for all the time they were suffered or permitted to work, engaged in work, and/or were under Defendants' control, in violation of Labor Code sections 223, 510, 1194, and 1198;

- e. Failure to reimburse Plaintiff and all other Aggrieved Employees with business expenses and necessary expenditures in violation of Labor Code section 2802;
- f. Failure to record accurate meal periods and work period times for Plaintiff and all other Aggrieved Employees in violation of Labor Code section 1174, 1174.5 and 1198;
- g. Failure to maintain accurate records of the start and end times of work and meal periods for Plaintiff and all other Aggrieved Employees, and knowingly and intentionally failing to provide Plaintiff and all other Aggrieved Employees of Defendants with accurate itemized wage statements in violation of Labor Code section 226;
- h. Failure to provide Plaintiff and all other Aggrieved Employees with accurate itemized wage statements in violation of Labor Code sections 226, 226.3, 248.5, and 1198;
- i. Failure to timely pay Plaintiff and all other Aggrieved Employees all minimum, regular and overtime wages, as well as all meal and rest period premium wages, for all the time they were suffered or permitted to work, engaged in work, and/or were under Defendants' control in violation of Labor Code section 204;
- j. Failure to pay Plaintiff and all other Aggrieved Employees all minimum, regular and overtime wages, and all meal and rest period premium wages timely by the time set forth by law upon their separation of employment in violation of Labor Code sections 201 and 202;

1 k. Failure to comply with the maximum hours of work and the standard
2 conditions of labor fixed by the IWC under the “Meal Periods,” Rest
3 Periods,” “Hours and Days of Work,” and the “Records” sections of the
4 applicable IWC Wage Order, by failing to provide compliant meal and rest
5 periods, failing to pay meal and rest period premium wages, failing to pay all
6 overtime wages, and failing to keep and provide accurate records in violation
7 of Labor Code section 1198.

8 70. Plaintiff seeks to recover civil penalties required to be shared with the LWDA on
9 behalf of himself and other Aggrieved Employees for Defendant’s violations of the Labor Code,
10 including but not limited to Defendant’s violation of Labor Code sections 201-203, 204, 210,
11 223, 224, 225.5, 226, 226.3, 226(a), 226.7, 246, 248.5, 510, 512, 558, 1174, 1174.5, 1174(d),
12 1194, 1194.2, 1197, 1197.1, 1198, and 2802.

13 71. For all provisions of the Labor Code for which a civil penalty is not specifically
14 provided, Labor Code section 2699(f) imposes upon Defendants a penalty of one hundred dollars
15 (\$100.00) for each aggrieved employee per pay period for the initial violation, and two hundred
16 dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation.
17 Defendants violated Labor Code sections 226.7, 512, and 1198 by failing to provide Plaintiff and
18 Aggrieved Employees lawfully-compliant meal periods and by failing to pay them meal period
19 premium wages for each day a meal period was not provided. Under Labor Code section
20 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per
21 pay period for the initial violation of Labor Code sections 226.7 and 1198, and \$200 for each
22 aggrieved employee per pay period for each subsequent violation.

23 72. Defendants violated Labor Code sections 226.7 and 1198 by failing to authorize
24 and permit Plaintiff and Aggrieved Employees to take duty-free rest periods and by failing to pay
25 them rest period premium wages for each day a rest period was not provided. Under Labor Code
26 section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee
27 per pay period for the initial violation of Labor Code sections 226.7 and 1198, and \$200 for each
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aggrieved employee per pay period for each subsequent violation.

73. Defendants violated Labor Code sections 223, 1194, 1197, and 1198 by not paying Plaintiff and other Aggrieved Employees at least minimum and regular wages for all the time they were suffered or permitted to work, engaged in work and/or under Defendants' control, as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code sections 223, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

74. Defendants violated Labor Code sections 223, 510, 1194, and 1198 by not paying Plaintiff and other Aggrieved Employees all overtime wages earned for all the time they were suffered or permitted to work, engaged in work, and/or were under Defendants' control, as alleged herein. At all relevant times, Plaintiff and, on information and belief, other Aggrieved Employees were not paid all overtime when they worked in excess of eight hours a workday or forty hours in a workweek. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period or the initial violation of Labor Code sections 223, 1194, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

75. Under Labor Code section 225.5, Defendants, in addition to, and entirely independent and apart from, any other penalty, are subject to a civil penalty for unlawfully withholding wages due Plaintiff and other Aggrieved Employees in violation of Labor Code section 223 as follows: (1) for an initial violation, \$100.00 for each failure to pay each employee, (2) for each subsequent violation, or any willful or intentional violation, \$200.00 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.

76. Defendants violated Labor Code sections 201-203, and 1198 by not paying Plaintiff and other Aggrieved Employees all minimum, regular, overtime, meal and rest premium wages owed by the time set forth by law upon their separation of employment, as alleged herein.

Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code sections 201, 202, and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

77. Defendants violated Labor Code sections 204 and 1198 by not paying Plaintiff and Aggrieved Employees all minimum, regular, overtime, meal and rest period premium wages owed by the time set forth by law during their employment, as alleged herein. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code sections 204 and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

78. Under Labor Code section 210(a), Defendants, in addition to and entirely independent and apart from any other penalty, are subject to a civil penalty for failing to pay the wages of each aggrieved employee as provided in Labor Code section 204, as follows: (1) for any initial violation, \$100 for each failure to pay each aggrieved employee, (2) for each subsequent violation, or any willful or intentional violation, \$200 for each failure to pay each aggrieved employee, plus 25 percent of the amount unlawfully withheld. This amount shall be recovered on behalf of the Labor Commissioner.

79. Defendants violated Labor Code sections 226(a), 1174(d), and 1198 by failing to maintain records detailing the proper applicable hourly rates of pay and accurate start and end times of any meal periods, and knowingly and intentionally failing to maintain and provide Plaintiff and other Aggrieved Employees of Defendants with wage statements itemizing accurately all information required by Labor Code section 226(a), as alleged herein, including the total hours worked, all regular hours worked, all overtime hours worked, the applicable hourly rate per hour worked, and the total wages earned. Thus, under Labor Code section 2699(f)(2), Defendants are subject to a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation of Labor Code sections 226(a) and 1198, and \$200 for each aggrieved employee per pay period for each subsequent violation.

80. Alternatively, Labor Code section 226.3 provides for a civil penalty in the amount of \$250 per violation in an initial citation and \$1,000 for each violation in a subsequent citation for which the employer fails to provide an employee with a wage deduction statement or fails to keep the records required in subdivision (a) of section 226.

81. Labor Code section 1174.5 provides for a civil penalty of \$500 for any person employing labor who willfully fails to maintain accurate and complete records required by subdivision (d) of section 1174.

82. Plaintiff, in his representative capacity on behalf of himself and all other Aggrieved Employees, is entitled to and seeks recovery of reasonable attorneys' fees as provided by Labor Code § 218.5 and Code of Civil Procedure § 1021.5.

83. Plaintiff seeks to recover civil penalties on behalf of himself and other Aggrieved Employees for Defendants' violations of the Labor Code, including but not limited to Defendants' violations of Labor Code sections 201-203, 204, 223, 224, 226, 226.7, 246, 510, 512, 1174, 1194, 1197, and 1198, pursuant to Labor Code section 2698, et seq. The exact amount of the applicable penalties is in an amount to be shown according to proof at trial and within the jurisdictional limitations of this Court.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, in his representative capacity, prays for judgment against Defendants and in favor of the state of California, Plaintiff, and all other Aggrieved Employees as follows:

- a. For any and all civil penalties available for the Labor Code violations alleged herein including, but not limited to, civil penalties under Labor Code § 2699(f), and/or other applicable law;
- b. For an order determining that Plaintiff is entitled to recover a civil penalty of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation as provided in Labor Code § 2699(f);

- 1 c. For reasonable attorneys' fees and costs of suit to the extent permitted by law,
2 including, but not limited to, Labor Code §§ 201-203, 204, 210, 218.5, 218.6,
3 223, 224, 225.5, 226, 226.3, 226.7, 246, 248.5, 510, 512, 1174, 1174.5, 1174(d),
4 1194, 1194, 1194.2, 1197, 1198, and 2802, 2699(g)(1), Code of Civil Procedure §
5 1021.5, and the "common fund" theory, the "substantial benefit" theory, and/or
6 other applicable law;
7 d. For appropriate equitable relief pursuant to California law; and
8 e. For any and all other relief as this Court deems proper and just.

9 Dated: June 27, 2024

KIM LEGAL, APC

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12 By: _____

13 Frank H. Kim

14 Attorneys for Plaintiff Daniel Matthew Ferguson