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behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN DIEGO

ERIC SANCHEZ, on behalf of himself and
all others similarly situated, and on behalf
of the general public,

Plaintiff,

v.

J & L INSULATION, INC.; and DOES 1-
100,

Defendants.

Case No. 37-2024-00029776-CU-OE-CTL

**PLAINTIFF ERIC SANCHEZ'S PAGA
COMPLAINT**

- 1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)**
- 2. Violation of the PAGA for Failure to Pay All Overtime Wages (Cal. Lab. Code § 2698, et. seq.)**
- 3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)**
- 4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)**
- 5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)**
- 6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)**
- 7. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiff ERIC SANCHEZ (hereinafter “Plaintiff”), on behalf himself and all other similarly
2 aggrieved employees (hereinafter “aggrieved employees”), files this Complaint against Defendant J
3 & L INSULATION, INC. (hereinafter “Defendant”) and/or DOES 1-100.

4 **I. INTRODUCTION**

5 1. This is a representative action seeking recovery of penalties under the California Labor Code
6 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
7 Defendant and/or DOES 1-100. The PAGA permits an “aggrieved employee” to bring a
8 lawsuit on behalf of himself and other current and former employees to address an employer’s
9 violations of the *California Labor Code*.

10 2. This action is brought on behalf of Plaintiff and all other aggrieved employees of Defendant
11 and/or DOES who: worked a shift of at least five (5) hours without receiving a meal period;
12 worked four (4) hours, or a major fraction thereof, without receiving a ten (10) minute net rest
13 break; worked qualifying shifts without receiving second meal periods and second and third
14 rest breaks; were not provided accurate itemized wage statements; were not paid all wages
15 owed twice per month; were not paid compensation for all time worked at the straight,
16 overtime, or double time rate; and were not paid waiting time penalties. Plaintiff seeks
17 penalties on behalf of himself and all other aggrieved employees of Defendant and/or DOES
18 as provided herein. This Complaint also seeks attorneys’ fees and costs under the PAGA, Cal.
19 Lab. Code § 2699(g)(1).

20 3. At all times mentioned herein, Plaintiff and the other aggrieved employees were not classified
21 as “Exempt” or primarily employed in an executive, professional, or administrative capacity.
22 Thus, under California law, Plaintiff and the aggrieved employees should be: provided meal
23 periods; authorized and permitted to take rest periods; paid one hour of premium pay for all
24 unprovided meal periods; paid one hour of premium pay for all rest periods that were not
25 authorized and/or permitted; paid penalties for not being provided itemized wage statements;
26 paid compensation for all time worked at the regular, overtime or double time rate; paid all
27 wages owed twice per month; and paid penalties for not being paid timely at the time of
28 termination.

1 4. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of
2 Plaintiff and the aggrieved employees including, but not limited to, having the authority to hire
3 and fire Plaintiff and the other aggrieved employees, setting the wages of Plaintiff and the other
4 aggrieved employees, and instructing Plaintiff and the other aggrieved employees when and/or
5 where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved
6 and/or authorized wage and hour policies and/or practices that Plaintiff and the aggrieved
7 employees labored under. These policies and/or practices included, but were not limited to,
8 policies and/or practices regarding meal periods, straight time, overtime, double time, rest
9 periods, wage statements, paying compensation at time of termination, and timing of payment.
10 Further, Defendant and/or DOES had the ability to prevent Plaintiff and the other aggrieved
11 employees from working.

12 II. JURISDICTION AND VENUE

13 5. Plaintiff is an individual residing in California. Plaintiff was employed by Defendant and/or
14 DOES in California. Plaintiff, and each of the aggrieved employees, were employees of
15 Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of
16 California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies
17 beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor
18 and Workforce Development Agency (LWDA).

19 6. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant
20 and/or DOE operates facilities, employs hourly employees, conducts business, and commits
21 *California Labor Code* violations within San Diego County and California. Each Defendant
22 and/or DOE is within the jurisdiction of this Court for service of process purposes. The
23 unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees
24 situated within the State of California and within San Diego County. Defendant and/or DOES
25 employ numerous aggrieved employees in California and/or San Diego County.

26 7. Plaintiff brings this action on behalf of himself and the other aggrieved employees of
27 Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the
28 general public, will and does seek to recover any and all penalties for each and every violation

shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice with the LWDA of his intent to bring this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with at least seventy-five (75) percent of the penalties recovered being reimbursed to the State of California and the LWDA.

8. There is no federal question at issue as the issues herein are based solely upon California statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil Procedure*, and *Civil Code*.

9. The California Superior Court also has jurisdiction in this matter because the penalties sought exceed the minimum jurisdictional limits of the Superior Court and will be established at trial, according to proof. Defendant and/or DOES either own, maintain offices, transact business, have an agent or agents, have their principal place of business in, and/or otherwise are found within the County of San Diego, California.

III. THE PARTIES

A. Plaintiff

10. Plaintiff, a former employee of Defendant and/or DOES, and similar aggrieved employees were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage statements, payment of wages owed twice a month, compensation for all time worked at the regular, overtime, and doubletime rate, to be paid timely pursuant to California law, and to receive timely wages at the time of termination.

11. Plaintiff and similar aggrieved employees were and are employed in the State of California by the Defendant and/or DOES as non-exempt hourly employees during the relevant time period. Plaintiff was employed in a non-exempt capacity.

12. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the LWDA and Defendant on April 18, 2024. This notice demonstrates that Plaintiff is an aggrieved employee and has standing to bring a representative action on behalf of the LWDA and as a private attorney general. No notice of cure by Defendant and/or DOES was provided and no notice of investigation was received from the LWDA in the statutorily proscribed sixty-

1 five (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files
2 this action as a “Representative Action” as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

3 **B. Defendant**

4 13. At all relevant times herein, Defendant and/or DOES employed Plaintiff and the aggrieved
5 employees to provide insulation for new homes, building expansions, and both residential and
6 commercial remodels for Defendant’s and/or DOES’ customers in the State of California.

7 14. Defendant’s and/or DOES’ principal place of business was/is in the State of California.

8 15. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

9 16. California is the nerve center of Defendant’s and/or DOES’ operations.

10 17. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
11 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
12 information and belief alleges that said Defendants are now, and/or at all times mentioned in
13 this Complaint were doing business in the State of California and/or throughout the United
14 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
15 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
16 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

17 18. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects
18 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
19 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
20 attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized
21 the acts of each of the remaining Defendants.

22 19. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,
23 agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of
24 Defendant and/or DOES at all times.

25 **IV. GENERAL ALLEGATIONS**

26 20. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims
27 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
28 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are

1 composed of all non-exempt hourly employees of Defendant and/or DOES in the State of
2 California.

3 21. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
4 Plaintiff and the aggrieved employees were entitled to be paid for all hours worked at the
5 minimum, regular, overtime, and/or doubletime rate of pay.

6 22. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
7 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
8 periods in a timely manner or payment of one hour of pay as additional compensation at
9 Plaintiff's and the aggrieved employees' regular rate of pay when they did not receive a timely,
10 uninterrupted meal period.

11 23. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
12 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
13 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES
14 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and
15 California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES failed
16 to provide Plaintiff and the other aggrieved employees another duty-free meal period of not
17 less than thirty (30) minutes for every shift of more than ten (10) hours per day.

18 24. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
19 Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take
20 legally compliant rest periods in a timely manner or payment of one hour of pay as additional
21 compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were
22 not authorized and/or permitted to take a legally compliant rest period.

23 25. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction
24 thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide
25 compensation for these periods, Defendant and/or DOES willfully violated the provisions of
26 *Cal. Lab. Code* § 226.7, IWC Wage Order No. 4-2001, and California Code of Regulations,
27 Section 11070(12).

28 26. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff

and to other terminated or resigned members of the aggrieved employees and failed to timely pay wages during employment.

27. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees all wages earned twice per month.

28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay statements in accordance with California law.

29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they were not providing complete and accurate pay statements in accordance with California law to Plaintiff and the aggrieved employees.

30. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with California law, and that Defendant and DOES had the ability to pay such compensation, but willfully and intentionally failed to do so, and Defendant and DOES falsely represented to Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and the other aggrieved employees.

31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the other aggrieved employees were entitled to timely wages at the time of termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages owed, meal period premiums, and/or rest period premiums owed at the time of termination.

32. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter.

33. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as all non-exempt hourly employees of Defendant and/or DOES in California, employed beginning one year prior to the date Plaintiff sent Notice to the LWDA.

34. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with respect to the issues or in any other way.

FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code §2698 et. seq.).

35. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

36. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab. Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions from wages when the employer is required or empowered to do so by state or federal law or when the deduction is expressly authorized in writing by the employee for specified purposes that do not in effect reduce the agreed upon wage.

37. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

38. Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and the aggrieved employees for all hours worked during their training periods. Defendant and/or DOES pay Plaintiff and the aggrieved employees a flat rate for the work performed during their training periods. However, this flat rate paid to Plaintiff and the aggrieved employees results in them being compensated for the work they perform at an hourly rate less than the applicable minimum wage.

39. Further, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked under Defendant’s and/or DOES’ piece-rate pay system. California Labor Code § 226.2, requires employees to be “compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.” Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system

1 which compensated them based on the number of jobs they complete, as opposed to an hourly
2 rate. However, Defendant's and/or DOES' piece-rate does not separately and directly
3 compensate Plaintiff and the aggrieved employees for rest and recovery periods, nor the
4 substantial amount of other work that Defendant and/or DOES require, including, but not
5 limited to, loading and unloading materials or traveling to jobsites.

6 40. In addition, when Plaintiff and the aggrieved employees are able to take meal periods, Plaintiff
7 and the aggrieved employees are not relieved of all duties and/or employer control during their
8 meal periods. Specifically, Plaintiff and the aggrieved employees worked through their meal
9 periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby
10 denying them the right to be completely free from employer control under California law.

11 41. Furthermore, because Defendant and/or DOES pay Plaintiff and the aggrieved employees
12 based on the number of jobs they complete, Plaintiff and the aggrieved employees are
13 incentivized to work through their meal periods or risk being paid less for the day.

14 42. Additionally, Defendant and/or DOES also fail to keep accurate time records for Plaintiff and
15 the aggrieved employees, resulting in a continuous policy of not paying Plaintiff and the
16 aggrieved employees for all hours worked. Defendant and/or DOES pay Plaintiff and the
17 aggrieved employees based on a pre-set number of hours per shift, rather than the actual hours
18 worked. Plaintiff and the aggrieved employees are not paid beyond those pre-set hours during
19 their training periods nor under Defendant's and/or DOES' piece-rate pay system. In fact,
20 Defendant and/or DOES do not keep any time records reflecting when Plaintiff and the
21 aggrieved employees "clock in" at the start of a shift, "clock out" for a meal period, "clock in"
22 after a meal period, and "clock out" and the end of a shift. As a result, Defendant and/or DOES
23 has breached both their duty under California law to pay Plaintiff and the aggrieved employees
24 for all hours worked and their duty to maintain accurate records for Plaintiff and the aggrieved
25 employees reflecting time worked and meal periods taken.

26 43. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
27 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay
28 Plaintiff and similarly aggrieved employees for meal period time when Plaintiff and the

1 aggrieved employees were not relieved of all duties and/or employer control.

2 44. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the

3 wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant

4 and/or DOES acted with malice or in conscious disregard of Plaintiff's and the aggrieved

5 employees' rights.

6 45. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid

7 wages, and lost interest on such wages, and expenses.

8 46. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who

9 worked for Defendant and/or DOES in California.

10 47. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant and/or

11 DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under

12 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public

13 to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* §

14 2699.5.

15 48. Plaintiff, as a representative of the people of the State of California, will seek any and all

16 penalties otherwise capable of being collected by the Labor Commission and/or the

17 Department of Labor Standards Enforcement (DLSE). This includes each of the following, as

18 set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any

19 alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

20 49. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself

21 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred

22 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal.*

23 *Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per

24 pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

25 50. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved

26 employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this

27 chapter or any provisions regulating hours and days of the week of the Industrial Welfare

28 Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages

pursuant to Cal. Lab. Code § 558(a).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

51. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

52. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee.

53. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

54. Defendant and/or DOES failed to pay overtime when Plaintiff and the aggrieved employees worked over eight (8) hours per day and when they worked over forty (40) hours per week.

55. Plaintiff and the aggrieved employees were deprived of wages for overtime hours worked because Defendant and/or DOES failed to pay them overtime wages for all overtime hours worked. This resulted in Plaintiff and the aggrieved employees not being paid all overtime wages owed to them.

56. Defendant and/or DOES also failed to pay Plaintiff and the aggrieved employees for all hours worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week, thus depriving Plaintiff and the aggrieved employees of overtime wages.

57. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Specifically, Defendant and/or DOES have a continuous policy of failing to pay Plaintiff and the aggrieved employees for all hours worked during their training periods. Defendant and/or DOES pay Plaintiff and the aggrieved

employees a flat rate for the work performed during their training periods. However, under Labor Code section 515, this flat rate paid to Plaintiff and the aggrieved employees can only compensate for 40 hours per week. When Plaintiff and the aggrieved employees work over forty (40) hours in a week, these hours must be compensated at an overtime rate.

58. Further, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked under Defendant's and/or DOES' piece-rate pay system. California Labor Code § 226.2, requires employees to be "compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system which compensated them based on the number of jobs they complete, as opposed to an hourly rate. However, Defendant's and/or DOES' piece-rate does not separately and directly compensate Plaintiff and the aggrieved employees for rest and recovery periods, nor the substantial amount of other work that Defendant and/or DOES require, including, but not limited to, loading and unloading materials or traveling to jobsites. By failing to pay for this time when Plaintiff and the aggrieved employees work over eight (8) hours in a shift and forty (40) hours in a week, these unpaid hours must be compensated at an overtime rate.

59. Additionally, when Plaintiff and the aggrieved employees are able to take meal periods, Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law. When Plaintiff and the aggrieved employees work over eight (8) hours in a shift and forty (40) hours in a week, these unpaid hours must be compensated at an overtime rate.

60. Furthermore, Defendant and/or DOES also fail to keep accurate time records for Plaintiff and the aggrieved employees, resulting in a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES pay Plaintiff and the aggrieved employees based on a pre-set number of hours per shift, rather than the actual hours worked. Plaintiff and the aggrieved employees are not paid beyond those pre-set hours during

1 their training periods nor under Defendant's and/or DOES' piece-rate pay system. In fact,
2 Defendant and/or DOES do not keep any time records reflecting when Plaintiff and the
3 aggrieved employees "clock in" at the start of a shift, "clock out" for a meal period, "clock in"
4 after a meal period, and "clock out" and the end of a shift. As a result, when Plaintiff and the
5 aggrieved employees work over eight (8) hours in a shift and forty (40) hours in a week,
6 Defendant and/or DOES have breached both their duty under California law to pay Plaintiff
7 and the aggrieved employees for all overtime hours worked and their duty to maintain accurate
8 records for Plaintiff and the aggrieved employees reflecting overtime hours worked.

9 61. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
10 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and Class
11 Members by failing to pay Plaintiff and the aggrieved employees for time when Plaintiff and
12 the aggrieved employees were not relieved of all duties and/or employer control. By failing to
13 pay for this time when Plaintiff and the aggrieved employees work over eight (8) hours in a
14 shift and forty (40) hours in a week, these hours must be compensated at an overtime rate.

15 62. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
16 wages, and lost interest on such wages, and expenses.

17 63. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
18 worked for Defendant and/or DOES in California.

19 64. Plaintiff, as a representative of the people of the State of California, will seek any and all
20 penalties otherwise capable of being collected by the Labor commission and/or the Department
21 of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

22 65. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
23 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
24 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
25 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
26 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

27 66. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
28 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this

chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

67. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

68. Under Cal. Lab. Code § 512, and IWC Wage Order 4-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

69. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

70. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, 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.

71. Defendant and/or DOES breached the legal duty to provide meal periods to employees by failing to provide employees with meal periods within the timeframes outlined by California law. Specifically, Defendant and/or DOES fail to provide Plaintiff and the aggrieved employees with meal periods of thirty (30) minutes in duration within the first five (5) continuous hours of work, nor second meal periods of thirty (30) minutes in duration within

1 the first ten (10) continuous hours of work.

2 72. Additionally, when Plaintiff and the aggrieved employees are able to take meal periods, they
3 are not relieved of all duties and/or employer control during their meal periods. Specifically,
4 Plaintiff and the aggrieved employees worked through their meal periods to satisfy their
5 demanding work duties imposed by Defendant and/or DOES, thereby denying them the right
6 to be completely free from employer control under California law.

7 73. Furthermore, because Defendant and/or DOES pays Plaintiff and the aggrieved employees
8 based on the number of jobs they complete, Plaintiff and the aggrieved employees are
9 incentivized to work through their meal periods or risk being paid less for the day.

10 74. Defendant and/or DOES also fail to keep accurate time records for Plaintiff and the aggrieved
11 employees. In fact, Defendant and/or DOES do not keep any time records reflecting when
12 Plaintiff and the aggrieved employees “clock in” at the start of a shift, “clock out” for a meal
13 period, “clock in” after a meal period, and “clock out” and the end of a shift. As a result,
14 Defendant and/or DOES have breached their duty under California law to maintain accurate
15 records for Plaintiff and the aggrieved employees evidencing meal periods taken, raising the
16 presumption that they were not provided at all.

17 75. By failing to provide statutory first and/or second meal periods, and by failing to provide
18 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
19 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

20 76. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
21 worked for Defendant and/or DOES in California.

22 77. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
23 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
24 has satisfied all prerequisites to serve as a representative of the general public to enforce
25 California’s labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

26 78. Plaintiff, as a representative of the people of the State of California, will seek all penalties
27 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
28 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section

2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

79. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

80. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

81. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

82. Industrial Welfare Commission Order No. 4-2001 section 11(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week 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.”

83. Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff and the aggrieved employees with rest periods “at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or DOES do not provide Plaintiff and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours worked or major fraction thereof.

84. Additionally, Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-

rate pay system which compensated them based on the number of jobs they complete, as opposed to an hourly rate. However, Defendant and/or DOES do not separately compensate Plaintiff and the aggrieved employees for rest periods under this piece-rate pay system.

85. Furthermore, when Plaintiff and the aggrieved employees are able to take rest periods, Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control during their rest periods. Specifically, Plaintiff and the aggrieved employees worked through their rest periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law. Because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the number of jobs they complete, Plaintiff and the aggrieved employees are incentivized to work through their rest periods or risk being paid less for the day.

86. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7 and Industrial Welfare Commission Order No. 4-2001 section 11(A).

87. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who worked for Defendant and/or DOES in California.

88. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 226.7.

89. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

90. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred

dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

91. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

92. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

93. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

94. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

95. At all relevant times, Cal. Lab. Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

96. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their

1 leaving Defendant's and/or DOES' employ.

2 97. Defendant and/or DOES have a continuous policy of not providing final wages to employees
3 who are fired at the time of termination or who quit within seventy-two (72) hours of their
4 leaving Defendant's and/or DOES employ. For example, Plaintiff never received a paycheck
5 at all for the time worked during his final week of employment

6 98. As outlined above, Defendant and/or DOES also have a continuous policy of failing to pay
7 Plaintiff and the aggrieved employees for all hours worked during their training periods.
8 Defendant and/or DOES pay Plaintiff and the aggrieved employees a flat rate for the work
9 performed during their training periods. However, this flat rate paid to Plaintiff and the
10 aggrieved employees results in them being compensated for the work they perform at an hourly
11 rate less than the applicable minimum wage.

12 99. Further, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the
13 aggrieved employees for all hours worked under Defendant's and/or DOES' piece-rate pay
14 system. California Labor Code § 226.2, requires employees to be "compensated for rest and
15 recovery periods and other nonproductive time separate from any piece-rate compensation."
16 Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system
17 which compensated them based on the number of jobs they complete, as opposed to an hourly
18 rate. However, Defendant's and/or DOES' piece-rate does not separately and directly
19 compensate Plaintiff and the aggrieved employees for rest and recovery periods, nor the
20 substantial amount of other work that Defendant and/or DOES require, including, but not
21 limited to, loading and unloading materials or traveling to jobsites.

22 100. In addition, when Plaintiff and the aggrieved employees are able to take meal periods, Plaintiff
23 and the aggrieved employees are not relieved of all duties and/or employer control during their
24 meal periods. Specifically, Plaintiff and the aggrieved employees worked through their meal
25 periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby
26 denying them the right to be completely free from employer control under California law.

27 101. Furthermore, because Defendant and/or DOES pay Plaintiff and the aggrieved employees
28 based on the number of jobs they complete, Plaintiff and the aggrieved employees are

1 incentivized to work through their meal periods or risk being paid less for the day.

2 102. Additionally, Defendant and/or DOES also fail to keep accurate time records for Plaintiff and
3 the aggrieved employees, resulting in a continuous policy of not paying Plaintiff and the
4 aggrieved employees for all hours worked. Defendant and/or DOES pay Plaintiff and the
5 aggrieved employees based on a pre-set number of hours per shift, rather than the actual hours
6 worked. Plaintiff and the aggrieved employees are not paid beyond those pre-set hours during
7 their training periods nor under Defendant's and/or DOES' piece-rate pay system. In fact,
8 Defendant and/or DOES do not keep any time records reflecting when Plaintiff and the
9 aggrieved employees "clock in" at the start of a shift, "clock out" for a meal period, "clock in"
10 after a meal period, and "clock out" and the end of a shift. As a result, Defendant and/or DOES
11 has breached both their duty under California law to pay Plaintiff and the aggrieved employees
12 for all hours worked and their duty to maintain accurate records for Plaintiff and the aggrieved
13 employees reflecting time worked and meal periods taken.

14 103. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
15 Defendant and/or DOES breached the legal duty to pay full wages by failing to pay Plaintiff
16 and similarly aggrieved employees for time when Plaintiff and the aggrieved employees were
17 not relieved of all duties and/or employer control

18 104. In addition, through its failure to provide Plaintiff and the aggrieved employees with lawful
19 meal and rest periods, Defendant and/or DOES do not pay all meal and rest period premiums
20 owed to Plaintiff and the aggrieved employees at the time of termination.

21 105. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
22 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
23 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
24 Cal. Lab. Code §§ 201 and 202.

25 106. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
26 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
27 from the due date thereof at the same rate until paid or until action is commenced; but the
28 wages shall not continue for more than thirty (30) days.

1 107. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
2 worked for Defendant and/or DOES in California.

3 108. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
4 at termination, is an aggrieved employee with standing to bring an action under the
5 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
6 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
7 2699.5.

8 109. Plaintiff, as a representative of the people of the State of California, seeks all penalties
9 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
10 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab.
11 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
12 following provisions: sections 201 through 203.

13 110. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
14 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
16 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

18 111. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
19 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
20 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
21 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
22 pursuant to Cal. Lab. Code § 558(a).

23 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
24 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply**
25 **with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

26 112. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
27 as if fully plead.

28 113. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage

1 statements all deductions from payment of wages and to accurately report total hours worked
2 by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant
3 and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees,
4 either as an detachable part of the check, draft, or voucher paying the employee’s wages, or
5 separately when wages are paid by personal check or cash, an accurate itemized statement in
6 writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
7 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
8 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
9 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
10 dates of the period for which the employee is paid, (7) the name of the employee and only the
11 last four digits of his or her social security number or an employee identification number other
12 than the social security number, (8) the name and address of the legal entity that is the
13 employer...(9) all applicable hourly rates in effect during the pay period and the corresponding
14 number of hours worked at each hourly rate and the corresponding number of hours worked at
15 each hourly rate by the employee....”

16 114. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
17 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day
18 and year, and a copy of the statement and the record of the deductions shall be kept on file by
19 the employer for at least three years at the place of employment or at a central location within
20 the State of California.”

21 115. *California Labor Code* section 246(i) also requires that, “[a]n employer shall provide an
22 employee with written notice that sets forth the amount of paid sick leave available, or paid
23 time off leave an employer provides in lieu of sick leave, for use on either the employee’s
24 itemized wage statement described in Section 226 or in a separate writing provided on the
25 designated pay date with the employee’s payment of wages.”

26 116. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in
27 excess of the normal work period shall be paid no later than the payday for the next regular
28 payroll period.” An employer complies with *California Labor Code* section 226(a) “if hours

worked in excess of the normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay 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.”

117. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) by failing to include all of the information required by *California Labor Code* section 226(a)(1) through (9) on each and every wage statement provided to Plaintiff and the aggrieved employees.

118. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally did not itemize the number of piece-rate units earned and any applicable piece rate on Plaintiff’s and the aggrieved employees’ wage statements. As a result, Plaintiff and the aggrieved employees are unable to determine from the wage statement how they are being paid under Defendant’s and/or DOES’ piece-rate pay system or whether they are being paid correctly.

119. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES knowingly and intentionally provides Plaintiff and the aggrieved employees with wage statements that do not itemize the number of hours worked or the applicable hourly rate. As a result, Plaintiff and the aggrieved employees are unable to determine from the wage statement how they are being paid or whether they are being paid correctly.

120. Additionally, by virtue of its failure to pay for all time worked, Defendant and/or DOES knowingly and intentionally did not correctly itemize the gross wages earned, total hours worked, net wages earned, and number of hours worked at each hourly rate on wage statements provided to Plaintiff and the aggrieved employees as *California Labor Code* section 226, subsection (a), requires in every pay period during the period of the relevant statute of limitations.

121. As outlined above, Defendant and/or DOES also have a continuous policy of failing to pay Plaintiff and the aggrieved employees for all hours worked during their training periods. Defendant and/or DOES pay Plaintiff and the aggrieved employees a flat rate for the work

performed during their training periods. However, this flat rate paid to Plaintiff and the aggrieved employees results in them being compensated for the work they perform at an hourly rate less than the applicable minimum wage.

122. Further, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked under Defendant's and/or DOES' piece-rate pay system. California Labor Code § 226.2, requires employees to be "compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation." Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system which compensated them based on the number of jobs they complete, as opposed to an hourly rate. However, Defendant's and/or DOES' piece-rate does not separately and directly compensate Plaintiff and the aggrieved employees for rest and recovery periods, nor the substantial amount of other work that Defendant and/or DOES require, including, but not limited to, loading and unloading materials or traveling to jobsites.

123. In addition, when Plaintiff and the aggrieved employees are able to take meal periods, Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law.

124. Furthermore, because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the number of jobs they complete, Plaintiff and the aggrieved employees are incentivized to work through their meal periods or risk being paid less for the day.

125. Additionally, Defendant and/or DOES also fail to keep accurate time records for Plaintiff and the aggrieved employees, resulting in a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES pay Plaintiff and the aggrieved employees based on a pre-set number of hours per shift, rather than the actual hours worked. Plaintiff and the aggrieved employees are not paid beyond those pre-set hours during their training periods nor under Defendant's and/or DOES' piece-rate pay system. In fact, Defendant and/or DOES do not keep any time records reflecting when Plaintiff and the

aggrieved employees “clock in” at the start of a shift, “clock out” for a meal period, “clock in” after a meal period, and “clock out” and the end of a shift. As a result, Defendant and/or DOES has breached both their duty under California law to pay Plaintiff and the aggrieved employees for all hours worked and their duty to maintain accurate records for Plaintiff and the aggrieved employees reflecting time worked and meal periods taken.

126. Plaintiff and the aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved employees were not relieved of all duties and/or employer control.

127. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to Plaintiff and the aggrieved employees for Defendant’s and/or DOES’ failure to provide lawful meal and rest periods.

128. Defendant and/or DOES also failed to itemize the amount of sick leave available for use on Plaintiff’s and the aggrieved employees’ wage statements in violation of *California Labor Code* section 246(i).

129. Throughout the statutory period, because of the knowing and intentional failure by Defendant and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the aggrieved employees have been able to reconstruct only a reasonable estimate of the hours worked and have, therefore, not received full compensation.

130. Further, in addition to any penalties levied upon Defendant and/or DOES for its failure to comply with *Labor Code* section 226 subdivision (a)’s requirement to provide Plaintiff and the aggrieved employees accurate, itemized wage statements, *Labor Code* section 226.3 assesses additional penalties for the failure to keep the records required in subdivision (a) of Section 226. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES to maintain records that “accurately shows all of the information required by this subdivision.” Defendant and/or DOES have violated their statutory duty to maintain records for Plaintiff and the aggrieved employees that contain all of the information under *Labor Code* section 226(a)(1) through (9)

1 131. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
2 worked for Defendant and/or DOES in California.

3 132. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate
4 and itemized wage statements, is an aggrieved employee with standing to bring an action under
5 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
6 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
7 2699.5.

8 133. Plaintiff, as a representative of the people of the State of California, will seek all penalties
9 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
10 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that section
11 2699.3(a) applies to any alleged violation of the following provisions: sections 226, 1174,
12 1199.

13 134. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
14 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
16 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

18 135. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
19 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
20 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
21 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
22 pursuant to Cal. Lab. Code § 558(a).

23 **SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
24 **Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month**
25 **(Cal. Lab. Code § 2698 *et. seq.*).**

26 136. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
27 as if fully plead.

28 137. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in

any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.

138. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and 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.”

139. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and the aggrieved employees twice per month. By failing to pay employees twice per month, Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 204(a).

140. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice during each calendar month.

141. As outlined above, Defendant and/or DOES also have a continuous policy of failing to pay Plaintiff and the aggrieved employees for all hours worked during their training periods. Defendant and/or DOES pay Plaintiff and the aggrieved employees a flat rate for the work performed during their training periods. However, this flat rate paid to Plaintiff and the aggrieved employees results in them being compensated for the work they perform at an hourly rate less than the applicable minimum wage.

142. Further, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked under Defendant’s and/or DOES’ piece-rate pay system. *California Labor Code* § 226.2, requires employees to be “compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.” Defendant and/or DOES pay Plaintiff and the aggrieved employees via a piece-rate pay system which compensated them based on the number of jobs they complete, as opposed to an hourly rate. However, Defendant’s and/or DOES’ piece-rate does not separately and directly

compensate Plaintiff and the aggrieved employees for rest and recovery periods, nor the substantial amount of other work that Defendant and/or DOES require, including, but not limited to, loading and unloading materials or traveling to jobsites.

143. In addition, when Plaintiff and the aggrieved employees are able to take meal periods, Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law.

144. Furthermore, because Defendant and/or DOES pay Plaintiff and the aggrieved employees based on the number of jobs they complete, Plaintiff and the aggrieved employees are incentivized to work through their meal periods or risk being paid less for the day.

145. Additionally, Defendant and/or DOES also fail to keep accurate time records for Plaintiff and the aggrieved employees, resulting in a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES pay Plaintiff and the aggrieved employees based on a pre-set number of hours per shift, rather than the actual hours worked. Plaintiff and the aggrieved employees are not paid beyond those pre-set hours during their training periods nor under Defendant's and/or DOES' piece-rate pay system. In fact, Defendant and/or DOES do not keep any time records reflecting when Plaintiff and the aggrieved employees "clock in" at the start of a shift, "clock out" for a meal period, "clock in" after a meal period, and "clock out" at the end of a shift. As a result, Defendant and/or DOES has breached both their duty under California law to pay Plaintiff and the aggrieved employees for all hours worked and their duty to maintain accurate records for Plaintiff and the aggrieved employees reflecting time worked and meal periods taken.

146. Plaintiff and the aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved employees were not relieved of all duties and/or employer control.

147. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to

- 1 Plaintiff and the aggrieved employees for Defendant's and/or DOES' failure to provide lawful
2 meal and rest periods.
- 3 148. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that
4 were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code §
5 204.
- 6 149. These claims are for Plaintiff and all similarly aggrieved hourly, non-exempt employees who
7 worked for Defendant and/or DOES in California.
- 8 150. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed
9 twice per month, is an aggrieved employee with standing to bring an action under the PAGA.
10 Plaintiff has satisfied all prerequisites to serve as a representative of the general public to
11 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
12 2699.5 for violations of Cal. Lab. Code § 204.
- 13 151. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
14 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
15 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
16 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
17 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).
- 18 152. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
19 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
20 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
21 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
22 pursuant to Cal. Lab. Code § 558(a).

23 **V. PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
25 for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- 26 A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- 27 B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for
28 failure to provide compliant meal periods;

- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;
- D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide all rest periods;
- E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid rest periods;
- F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to timely pay wages at separation;
- G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the regular, overtime, and double time rate for all time worked;
- H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compensation at the minimum wage;
- I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide accurate, itemized wage statements;
- J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to pay employees all wages owed twice per month; and
- K. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

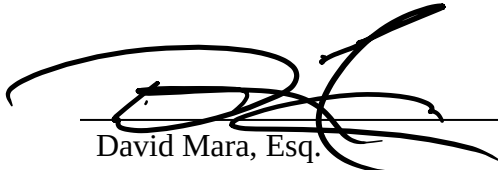
DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

MARA LAW FIRM, PC

Date: June 24, 2024

Signed:



David Mara, Esq.
Matthew Crawford, Esq.
Attorneys for Plaintiff ERIC SANCHEZ, on
behalf of himself and all others similarly
situated, and on behalf of the general public