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Attorneys for Plaintiff JOSE MAYORGA,
on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES- CENTRAL DISTRICT**

JOSE MAYORGA, on behalf of himself and
current and former aggrieved employees

Plaintiff,

vs.

EVANS FOOD GROUP LTD; and DOES 1 to
100, inclusive,

Defendants.

Case No.: **24STCV18791**

PAGA ACTION

**PLAINTIFF JOSE MAYORGA'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff JOSE MAYORGA ("Plaintiff"), who alleges and complains on
information and belief except as to those allegations relating to plaintiff himself, which are asserted
on personal knowledge, against Defendants EVANS FOOD GROUP LTD; and DOES 1 to 100,
inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself

1 and other current and former aggrieved employees of Defendants who worked as hourly non-exempt
2 employees in California during the relevant time period seeking civil penalties associated with
3 Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all hours
4 worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to
5 authorize or permit all legally required and/or compliant meal periods or pay meal period premium
6 wages; failure to authorize or permit all legally required and/or compliant rest periods or pay rest
7 period premium wages; indemnification for all necessary expenditures or losses incurred by
8 employees in direct consequence of discharging their duties; failure to pay wages for accrued paid
9 sick time at the regular rate of pay; statutory penalties for failure to timely pay earned wages during
10 employment; statutory penalties for failure to provide accurate wage statements; statutory waiting
11 time penalties in the form of continuation wages for failure to timely pay employees all wages due
12 upon separation of employment. Plaintiff seeks on a representative basis, following notice to the
13 Labor and Workforce Development Agency, civil penalties, reasonable attorneys' fees pursuant to
14 Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and
15 others aggrieved.

16 **II. JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
18 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
19 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
20 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
21 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
22 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
23 aggrieved California-based hourly non-exempt employees occurred in locations throughout
24 California, including but not limited to Los Angeles County, at 15430 Proctor Avenue, City of
25 Industry, CA 91745.

26 **III. PARTIES**

27 1. Plaintiff brings this action as a representative of the Labor and Workforce
28 Development Agency on behalf of himself and other current and former employees subject to

1 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
2 filed include current, former and/or future employees of Defendants who work, worked, or will work
3 for Defendants as direct employees as well as temporary employees employed through temp
4 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently
5 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by
6 Defendants in an hourly position at Defendants' location in Los Angeles County from approximately
7 January 1, 2021 until on or about May 6, 2024.

8 2. Defendant EVANS FOOD GROUP LTD is authorized to do business within the
9 State of California and is doing business in the State of California and/or that Defendants DOES 1-
10 50 are, and at all times relevant hereto were persons acting on behalf of Defendant EVANS FOOD
11 GROUP LTD in the establishment of, or ratification of, the aforementioned illegal wage and hour
12 practices or policies. Defendant EVANS FOOD GROUP LTD operates in Los Angeles County and
13 employed Plaintiff and aggrieved employees in Los Angeles County, including but not limited to,
14 at 15430 Proctor Avenue, City of Industry, CA 91745.

15 3. Defendants DOES 1 through 50 are corporations or other business entities or
16 organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California non-
17 exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised control over
18 the wages, hours and working conditions of employment of Plaintiff and aggrieved employees.

19 4. Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each
20 Defendant is sued individually and in their capacity as an agent, shareholder, owner, representative,
21 manager, supervisor, independent contractor and/or employee of each defendant who violated or
22 caused to be violated the minimum wage and overtime provisions of the Labor Code and/or any
23 provision of the Industrial Welfare Commission's wage orders regulating hours and days of work.

24 5. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
25 sues said defendants by said fictitious names and will amend this complaint when the true names
26 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
27 permitted by law or by the Court. Each fictitiously named defendant is in some manner responsible
28 for the events and allegations set forth in this complaint.

6. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

**CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF
2004, LABOR CODE SECTIONS 2698, ET SEQ.**

**(Against all Defendants by Plaintiff on behalf of Themselves, the State of California, and
Other Current and Former Aggrieved Employees)**

7. Plaintiff incorporates by reference and re-alleges each and every allegation contained in this pleading as though fully set forth herein.

8. During Plaintiff's employment and continuing through the present, Plaintiff alleges Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 246, 510, 512, 1194, 1197, 2802, and the applicable Wage Orders.

9. Specifically, Defendants have committed the following violations of California Labor Code:

10. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

11. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

12. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all

1 hours worked due to Defendants' policies, practices, and/or procedures including, but not limited
2 to,

3 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
4 non-exempt employees to remain on-duty during their off-the-clock meal breaks due to Defendants'
5 requirement that Plaintiff and other current and former aggrieved California-based hourly non-
6 exempt employees keep Defendants' cell phone on them and monitored at all times during their shift
7 including during off the clock meal breaks so they can to take calls from management and coworkers
8 while off the clock during meal breaks.

9 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
10 non-exempt employees to keep Defendants' cell phone on them and monitored at all times during
11 their shift including during off the clock meal breaks so they can to take calls from management and
12 coworkers while off the clock after clocking out for the end of their shift.

13 13. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
14 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
15 control without paying wages for that time. This resulted in Plaintiff and other current and former
16 aggrieved California-based hourly non-exempt employees working time for which they were not
17 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
18 Wage Order.

19 14. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
20 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
21 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
22 which includes all time that an employee is under control of the employer and all time the employee
23 is suffered and permitted to work. This includes the time an employee spends, either directly or
24 indirectly, performing services that inure to the benefit of the employer.

25 15. Labor Code sections 510 and 1194 require an employer to compensate employees a
26 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty (40)
27 hours in a workweek, and on any seventh consecutive day of work in a workweek:

28 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours

1 in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in
2 any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half
3 (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours
4 in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay
5 for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a
6 workweek shall be compensated at the rate of no less than twice the regular rate of pay of an
7 employee. Labor Code § 510.

8 16. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved
9 California-based hourly non-exempt employees overtime wages for all overtime hours worked due
10 to Defendants' policies, practices, and/or procedures including, but not limited to,

11 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
12 non-exempt employees to remain on-duty during their off-the-clock meal breaks due to Defendants'
13 requirement that Plaintiff and other current and former aggrieved California-based hourly non-
14 exempt employees keep Defendants' cell phone on them and monitored at all times during their shift
15 including during off the clock meal breaks so they can to take calls from management and coworkers
16 while off the clock during meal breaks.

17 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
18 non-exempt employees to keep Defendants' cell phone on them and monitored at all times during
19 their shift including during off the clock meal breaks so they can to take calls from management and
20 coworkers while off the clock after clocking out for the end of their shift.

21 17. Furthermore, overtime is based upon an employee's regular rate of pay. "The regular
22 rate at which an employee is employed shall be deemed to include all remuneration for employment
23 paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement –
24 Enforcement Policies and Interpretations Manual, Section 49.1.2.

25 18. In this case, Plaintiff alleges that when he and other current and former aggrieved
26 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
27 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
28 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
policy, practice, and/or procedure of failing to include all remuneration such as "*shift differential
pay*", for example, when calculating Plaintiff's and other current and former aggrieved California-

1 based hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

2 19. The foregoing policies, practices, and/or procedures resulted in time during each
3 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
4 employees were under the control of Defendants but were not compensated. To the extent that the
5 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
6 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
7 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
8 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
9 sections 510, 1194 and 1198, and the applicable Wage Order.

10 20. **Failure to pay wages to hourly non-exempt employees for workdays that**
11 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
12 current and former aggrieved California-based hourly non-exempt employees regularly worked
13 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

14 21. California law requires an employer to authorize or permit an employee an
15 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
16 all duties and the employer relinquishes control over the employee's activities prior to the
17 employee's sixth hour of work. Labor Code §§ 226.7, 512, and 1198; Wage Order 4 at § 11; *Brinker*
18 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
19 employee for a work period of more than ten (10) hours per day without providing the employee
20 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh
21 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
22 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
23 period is only permitted when: (1) the nature of the work prevents an employee from being relieved
24 of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

25 22. If an employer fails to provide an employee a meal period in accordance with the
26 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
27 for each workday that a legally required and compliant meal period was not provided. Labor Code
28 §§ 226.7 and 1198; Wage Order 4 at § 11.

1 23. In this case, Defendants failed to authorize or permit legally required and compliant
2 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
3 exempt employees due to Defendants' policies, practices, and/or procedures, including but not
4 limited to:

5 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
6 non-exempt employees to remain on-duty during their off-the-clock meal breaks due to Defendants'
7 requirement that Plaintiff and other current and former aggrieved California-based hourly non-
8 exempt employees keep Defendants' cell phone on them and monitored at all times during their shift
9 including during off the clock meal breaks so they can to take calls from management and coworkers
10 while off the clock during meal breaks.

11 (b) Failing to provide Plaintiff and other current and former aggrieved California-based
12 hourly non-exempt employees a second uninterrupted duty-free meal period of no less than thirty
13 (30) minutes for each workday that Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees work shifts over ten (10) hours.

15 24. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
16 procedure of failing to compensate Plaintiff and other current and former aggrieved California-based
17 hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each workday that
18 Plaintiff and/or other current and former aggrieved California-based hourly non-exempt employees
19 did not receive legally required and compliant meal periods, in violation of Labor Code section
20 226.7.

21 25. Finally, on occasions when Defendants paid Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short,
23 on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional
24 hour of pay at Plaintiff's and other current and former aggrieved California-based hourly non-
25 exempt employees' regular rate of compensation. Specifically, Defendants maintained a policy,
26 practice, and/or procedure of failing to include all remuneration such as "shift differential pay", for
27 example, when calculating Plaintiff's and other current and former aggrieved California-based
28 hourly non-exempt employees' regular rate of pay for the purpose of paying meal period premium

1 wages.

2 26. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
3 and/or other current and former aggrieved California-based hourly non-exempt employees not
4 receiving wages to compensate them for workdays during which Defendants did not provide them
5 with meal periods in compliance with California law.

6 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
7 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
8 current and former aggrieved California-based hourly non-exempt employees regularly worked
9 shifts of more than three-and-a-half (3.5) hours.

10 28. California law requires every employer to authorize and permit an employee a rest
11 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code
12 § 226.7; Wage Order 4 at § 12. Under California law, "[e]mployees are entitled to 10 minutes' rest
13 for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours
14 up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*
15 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code § 226.7; Wage
16 Order 4 at § 12. Rest periods, insofar as practicable, shall be in the middle of each work period.
17 Wage Order 4 at § 12. Additionally, the rest period requirement "obligates employers to permit –
18 and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*,
19 (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all
20 duties and relinquish control over how employees spend their time. *Id.*

21 29. If the employer fails to authorize or permit a required rest period, the employer must
22 pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday the
23 employer did not authorize or permit a legally required rest period. Labor Code § 226.7; Wage Order
24 4 at § 12.

25 30. In this case, Defendants failed to authorize or permit all legally required and
26 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
27 non-exempt employees due to Defendants' policies, practices, and/or procedures including, but not
28 limited to,

1 (a) Failing to provide Plaintiff and other current and former aggrieved California-based
2 hourly non-exempt employees net ten (10) minute uninterrupted, duty-free rest breaks for every four
3 (4) hours worked or major fraction thereof.

4 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly
5 non-exempt employees to remain on-duty during their rest breaks because Plaintiff and similarly
6 situated employees were required to keep Defendants' cell phone on them and monitored at all times
7 during their shift including during rest breaks so they can to take calls from management and
8 coworkers including during rest breaks.

9 (c) Failing to provide Plaintiff and other current and former aggrieved
10 California-based hourly non-exempt employees a third uninterrupted duty-free rest period of no less
11 than ten (10) net minutes on each workday that Plaintiff and other current and former aggrieved
12 California-based hourly non-exempt employees work shifts over ten (10) hours.

13 31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
14 procedure of failing to compensate Plaintiff and other current and former aggrieved California-based
15 hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each workday
16 they did not receive legally required and compliant rest periods, in violation of Labor Code section
17 226.7.

18 32. Finally, on occasions when Defendants did pay Plaintiff and other current and former
19 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short,
20 on-premise, on-duty, and/or interrupted rest periods, Defendants failed to pay the one (1) additional
21 hour of pay at Plaintiff's and other current and former aggrieved California-based hourly non-
22 exempt employees' regular rate of compensation. Specifically, Defendants maintained a policy,
23 practice, and/or procedure of failing to include all remuneration such "shift differential pay", for
24 example, when calculating Plaintiff's and other current and former aggrieved California-based
25 hourly non-exempt employees' regular rate of pay for the purpose of paying rest period premiums.

26 33. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff and
27 other current and former aggrieved California-based hourly non-exempt employees not receiving
28 wages to compensate them for workdays in which Defendants did not provide them with rest periods

1 in compliance with California law.

2 **34. Failure to Indemnify for Losses and Expenditures Incurred as Part of**
3 **Employment:** California law requires that every employer must indemnify its employees for all
4 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the
5 obedience of the directions of the employer. Moreover, an employer is prohibited from passing the
6 ordinary business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

7 35. Defendants violated Labor Code Section 2802 by failing to indemnify Plaintiff and
8 other current and former aggrieved California-based non-exempt hourly employees' necessary
9 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed a
10 policy, practice, and procedure included , but were not limited to,

11 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
12 non-exempt employees to use their personal cell phone to communicate with coworkers and
13 management and take pictures of shipment/pallets/work performed without reimbursing Plaintiff
14 and other current and former aggrieved California-based hourly non-exempt employees for such
15 use.

16 36. Moreover, Defendants employed policies and procedures which ensured Plaintiff and
17 aggrieved employees would not receive indemnification for their employment related expenses.
18 This practice resulted in Plaintiff and aggrieved employees not receiving such indemnification in
19 compliance with California law.

20 37. Therefore, Defendants are liable to Plaintiff and aggrieved employees for their
21 employment related expenses, including but not limited to costs related to use of their personal cell
22 phones and costs associated with their uniforms pursuant to Labor Code section 2802.

23 **38. Failure to provide sick pay wages:** Defendants had a policy and/or procedure where
24 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
25 accrued paid sick time.

26 39. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
27 who...works in California for the same employer for 30 or more days within a year from the
28 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues

1 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning
2 at the commencement of employment. Labor Code section 246(b).

3 40. Here, Plaintiff and other current and former aggrieved California-based hourly non-
4 exempt employees were employed by Defendants for 30 or more days and were entitled to paid sick
5 days. Defendants, however, lacked a policy, practice, and/or procedure whereby Plaintiffs and other
6 current and former aggrieved California-based hourly non-exempt employees who were employed
7 by Defendants for 30 days or more could accrue paid sick days at the rate of no-less-than one (1)
8 hour per every thirty (30) hours worked, beginning at the commencement of employment as required
9 by Labor Code section 246(b).

10 41. In this case, Plaintiff alleges that when he and other current and former aggrieved
11 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
12 pay them sick time wages at the proper sick time rate of pay due to Defendants' failure to include
13 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
14 policy, practice, and/or procedure of failing to include all remuneration including but not limited to
15 "shift differential pay", for example, when calculating Plaintiff and other current and former
16 aggrieved California-based hourly non-exempt employees' regular rate of pay for the purpose of
17 paying sick time.

18 42. Defendants' foregoing policy, practice, and/or procedure resulted in Defendants
19 failing to provide Plaintiff and other current and former aggrieved California-based hourly non-
20 exempt employees' paid sick days, in violation of Labor Code section 246.

21 43. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned
24 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th and
25 the 26th day of that month and wages earned between the 16th and the last day, inclusive, of any
26 calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other payroll
27 periods such as those that are weekly, biweekly, or semimonthly, must be paid within seven (7)
28 calendar days following the close of the payroll period in which wages were earned. Labor Code §

1 204(d).

2 44. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed to
3 timely pay Plaintiff and other current and former aggrieved California-based hourly non-exempt
4 employees their earned wages (including minimum wages, overtime wages, meal period premium
5 wages and/or rest period premium wages), in violation of Labor Code section 204. Defendants'
6 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff and
7 other current and former aggrieved California-based hourly non-exempt employees their earned
8 wages within the applicable time frames outlined in Labor Code section 204.

9 45. **Secret payment of lower wages than designated by statute:** Labor Code section
10 223 provides that, where any statute or contract requires an employer to maintain the designated
11 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
12 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by
13 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful
14 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 510,
15 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor Code
16 section 1198, Defendants secretly paid a lower wage than designated by statute while purporting to
17 pay the wages designated by statute, in violation of Labor Code section 223.

18 46. **Failure to provide complete and accurate wage statements:** Labor Code section
19 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an employee
20 his or her wages, the employer must "furnish each of his or her employees ... an itemized statement
21 in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any
22 employee whose compensation is solely based on a salary and who is exempt from payment of
23 overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare
24 Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee
25 is paid on a piece-rate basis, (4) all deductions, provided, that all deductions made on written orders
26 of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
27 dates of the pay period for which the employee is paid, (7) the name of the employee and his or her
28 social security number, (8) the name and address of the legal entity that is the employer, and (9) all

1 applicable hourly rates in effect during the pay period and the corresponding number of hours
2 worked at each hourly rate by the employee.”

3 47. Defendants committed direct violations of Labor Code section 226, through their
4 policies, practices, and/or procedures, including, but not limited to failing to provide Plaintiff and
5 other current and former aggrieved California-based hourly non-exempt employees accurate
6 itemized wage statements showing: (1) no hours for differential pay.

7 48. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
8 and other current and former aggrieved California-based hourly non-exempt employees all wages
9 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest period
10 premium wages) rendered Plaintiff’s and other current and former aggrieved California-based
11 hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code section
12 226(a)(1, 2, 5 & 9).

13 49. **Failure to pay employees all wages due at time of termination/resignation:** An
14 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
15 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
16 hours of resignation (Labor Code section 202).

17 50. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
18 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all
19 of their earned wages (including minimum wages, overtime wages, meal period premium wages,
20 and/or rest period premium wages), Defendants failed to pay those employees timely after each
21 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

22 51. Labor Code sections 2699, subdivisions (a) and (g), authorize an aggrieved
23 employee, on behalf of himself or herself and other current or former employees, to bring a civil
24 action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor
25 Code section 2699.3.

26 52. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
27 section 2699.3. On May 24, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
28 provided notice to Defendants by certified mail which provided notice of the specific provisions of

1 the Labor Code alleged to have been violated, including the facts and theories to support the
2 violations alleged.

3 53. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
4 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
5 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
6 parties notice within 65 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
7 to investigate Plaintiff's claims.

8 54. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
9 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a), 226.7,
10 246, 510, 512, and 1194, During Plaintiff's employment and continuing through the present,
11 preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the
12 following amounts:

13 a. For violations of Labor Code sections 201, 202, 203, 226(a), 226.7, and 2802;
14 one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and
15 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
16 violation [penalty amounts established by Labor Code section 2699(f)(2)].

17 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty
18 dollars (\$250) for each employee for each pay period for the initial violation, and one thousand
19 dollars (\$1,000) for each subsequent violation, for each underpaid employee for each pay period
20 [penalty amounts established by Labor Code section 226.3].

21 c. For violations of Labor Code section 510 and 512, fifty dollars (\$50) for each
22 employee for each pay period for the initial violation, and one hundred dollars (\$100) for each
23 subsequent violation, for each underpaid employee for each pay period [penalty amounts established
24 by Labor Code section 558].

25 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
26 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
27 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
28 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code

1 section 210].

2 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
3 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
4 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
5 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
6 section 225.5].

7 55. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
8 reasonable attorneys' fees and costs in connection with his/her claims for civil penalties.

9 **PRAYER FOR RELIEF**

10 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER AGGRIEVED**
11 **EMPLOYEES, PRAYS AS FOLLOWS:**

12 **ON THE FIRST CAUSE OF ACTION:**

13 1. That Defendants be found to have violated the provisions of the Labor Code and the
14 IWC Wages Orders as to the Plaintiff and aggrieved employees;

15 2. For any and all legally applicable penalties during the relevant statute of limitations
16 subject to any permissible tolling, including but not limited to those recoverable under the California
17 Labor Code, including but not limited to sections 210, 225.5, 226.3, 558, 2699(f);

18 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
19 under California Labor Code section 2699(g); and

20 4. For such and other further relief, in law and/or equity, as the Court deems just or
21 appropriate.

22
23 Dated: July 29, 2024

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

24
25 By: 

26 Joseph Lavi, Esq.
27 Vincent C. Granberry, Esq.
28 Jeffrey M. Schwartz, Esq.
Attorneys for Plaintiff JOSE MAYORGA,
on behalf of himself and current and former
aggrieved employees