

EMPLOYMENT RIGHTS LAWYERS, APC

Amir H. Seyedfarshi, (SBN 301656)
amir@employmentrightslawyers.com
6380 Wilshire Blvd., Suite 1602
Los Angeles, California 90048
Telephone: (424) 777-0964

ELECTRONICALLY FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
8/1/2024 4:00 PM
By: Camille Jones, DEPUTY

Attorney for Plaintiff ASHLEY PENG PENG WANG, *the LWDA, and the Aggrieved Employees*
on behalf of herself and all similarly situated,

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

CIVSB2424437

ASHLEY PENG PENG WANG,
individually and on behalf of all others
similarly situated,

Plaintiff,

v.

GIGACLOUD TECHNOLOGY, INC., A
California Corporation, And DOES 1
Through 50, Inclusive,

Defendant.

**PLAINTIFF'S CLASS ACTION
COMPLAINT AND PAGA ACTION FOR:**

1. Failure to Provide Compliant Meal Breaks or Pay Premiums in Violation of Cal. Labor Code §§ 226.7 and 512;
2. Failure to Provide Compliant Rest Breaks or Pay Premiums in Violation of Cal. Labor Code § 226.7;
3. Failure to Pay for All Overtime Worked in Violation of Cal. Labor Code §§ 510, 1194 and 1198;
4. Failure to Pay Minimum Wages and Pay for All Wages Earned in Violation of Cal. Labor Code §§ 204, 1194, and 1197;
5. Failure to Pay Timely Wages in Violation of Cal. Labor Code §§ 204, 210;
6. Failure to Provide and Maintain Accurate Itemized Wage Statements in Violation of Cal. Labor Code §§ 226(a), 1174(d), and 1198.5;
7. Unfair Business Practices in Violation of Bus. & Prof. Code § 17200 *et seq.* and;
8. Violation of the Private Attorney General Act at Labor Code Sections 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff ASHLEY PENG PENG WANG (“Plaintiff”) on behalf of herself, the LWDA,
2 under the Labor Code Private Attorneys General Act of 2004, section 2699, *et seq.* (“PAGA”),
3 on behalf of all other Aggrieved Employees, and all similarly situated, hereby complains and
4 alleges as follows:

5
6 **NATURE OF THE ACTION**

7 1. Plaintiff, ASHLEY PENG PENG WANG brings this action on behalf of herself
8 and all other similarly situated, and fellow current and former Aggrieved Employees (defined
9 pursuant to, and on behalf of, the California general public) (hereinafter “ Class members”)
10 against Defendant, GIGACLOUD TECHNOLOGY, INC. (“Defendant”), and DOES 1 through
11 50 (collectively, “Defendant”).

12 2. As described in further detail below, during the course of her employment,
13 Plaintiff was subjected to unlawful conduct by Defendant including, *inter alia*, violations of
14 California’s wage and hour laws, the Industrial Welfare Commission (“IWC”)’s applicable
15 wage order, and California’s Unlawful Competition Law, Bus. & Prof. Code section 17200, *et*
16 *seq.* (“UCL”).

17 **OVERVIEW OF CLAIMS**

18 3. Plaintiff brings this action on behalf of herself and all others similarly situated, as
19 a class action against Defendant GigaCloud Technology, Inc., and DOES 1 to 100
20 (“Defendant”) for their (1) failure to provide timely and duty-free meal periods within the first
21 five hours and to provide lawful second meal periods for shifts worked in excess of ten hours
22 and/or pay meal period premiums for late meal breaks; (2) failure to provide timely, duty-free
23 rest periods for every four hours of work or major fraction thereof and/or pay rest period
24 premiums; (3) failure to pay all overtime wages; (4) failure to pay minimum wages; (5) failure
25 to provide accurate itemized wage statements within the one year prior to the filing of this
26 Complaint; (6) failure to pay timely wages based on the foregoing; (7) unfair competition in
27 violation of Business and Professional Code § 17200 based upon the aforementioned unpaid
28 wage and premium claims; and (8) violations of California’s Private Attorney General Act

1 (“PAGA”). As a result of the foregoing, Defendant has violated California statutory laws as
2 described below.

3 4. The “Class Period” is designated as the period from four years prior to the filing
4 of this action through the trial date. Defendant’s violations of California’s wage and hour laws
5 and unfair competition laws, as described more fully below, have been ongoing throughout the
6 Class Period.

7 5. The “PAGA Period” is designated as the period from one year prior to the filing
8 of Plaintiff Wang’s notice to the Labor and Workforce Development Agency (“LWDA”)
9 through the trial date. Defendant’s violations of California’s wage and hour laws and unfair
10 competition laws, as described more fully below, have been ongoing throughout the PAGA
11 Period.

12 **JURISDICTION AND VENUE**

13 6. This Court has jurisdiction over this action pursuant to CCP section 410.10
14 because Plaintiff’s damages exceed the jurisdictional minimum of this Court. At all relevant
15 times, Defendant employed individuals who lived and/or worked in San Bernardino County.
16 Plaintiff Wang was and is a resident of the city of Ontario, located in San Bernardino county.
17 Thus, this Court further has jurisdiction over Defendant because Defendant has obtained the
18 benefits of the laws of the State of California Moreover, Plaintiff asserts no claims arising under
19 federal law. Rather, Plaintiff brings this action based solely on, and only arising from,
20 California law, including, inter alia, California’s Labor Code and the UCL. Plaintiff, Class and
21 the Aggrieved Employees resided in and/or performed work for Defendant within in San
22 Bernardino County during the Class Period and PAGA Period.

23 7. The claims of the Class and the Aggrieved Employees are also based solely on
24 California law described herein. Furthermore, the total amount at issue in this case, inclusive of
25 attorneys’ fees, is less than \$5 million. Therefore, jurisdiction is appropriate in San Bernardino
26 County Superior Court.

27 //

28 //

THE PARTIES

Plaintiff

8. At all relevant times, Plaintiff was and is a resident of Ontario, San Bernardino County, California. Plaintiff was hired by Defendant on or around May 28, 2020, to work as a Warehouse Assistant at Defendant's premises, where it operates supply chain fulfillment transactions. Plaintiff was hired earning \$17.00 per hour but currently earns \$22.55 per hour. From at least four years from the filing of this complaint through the present, and on-going, Defendant's non-exempt employees, including Plaintiff, were not provided timely and duty-free meal and rest periods and/or provided meal and rest period premiums; were not provided accurate and/or complete wage statements; did not receive all their wages; and did not receive all wages timely and were subjected to Defendant's faulty policy.

9. By way of this action, Plaintiff also seeks to represent the following Classes:

- a. All non-exempt individuals who or were employed by GigaCloud Technologies, Inc. in the State of California during the Class Period. (hereinafter referred to as "Class Members" or the "Class");
- b. All Class Members who were issued one or more wage statements from Defendant during the period from one year prior to the filing of this Complaint and continuing through judgment (hereinafter referred to as "Wage Statement Class Members");
- c. All Class Members who did not receive their timely ten-minute, duty-free rest breaks while working for Defendant during the Class Period (hereinafter referred to as "Rest Break Class Members");
- d. All Class Members who did not receive their timely thirty-minute meal break on or before the fifth hour of work while working for Defendant on shifts greater than five hours during the Class Period (hereinafter referred to as "Meal Break Class Members");
- e. All Class Members who did not receive all their minimum wages during

the Class Period (hereinafter referred to as “Minimum Wage Class Members”);

10. Aggrieved Employees consist of all individuals who are or were California residents, and who worked for Defendant as non-exempt, hourly paid employees during the PAGA Period (“Aggrieved Employees”)

Defendant

11. Defendant owns and operates a company that streamlines e-commerce transactions for large parcel merchandise.

12. To operate its facilities, Defendant employs non-exempt employees, such as the Plaintiff, the Aggrieved employees and the Class Members.

13. DOES 1 through 50 (“DOES Defendants”) are sued herein under fictitious names pursuant to Code of Civil Procedure (“CCP”) section 474. The identity of the DOES Defendants is unknown to Plaintiff as Plaintiff does not, at this time, know the true names or capacities of the DOES Defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege their true names and capacities once ascertained. Plaintiff is informed and believes, and thereon alleges, that each DOES Defendant is highly responsible in some manner for the events and happenings referred to herein, and legally caused the injuries and damages alleged in this Complaint.

14. Plaintiff is informed and believes and thereon alleges, that each and every Defendant, including the DOES Defendants, was the authorized agent, principal, partner, joint venturer and/or guarantor, actual or ostensible, of each and every other Defendant; and that each and every Defendant had full authority to do as alleged herein, unless alleged otherwise. Furthermore, each and every Defendant was operating within the course and scope of their agency, or in a principal, partner, joint venturer, and/or guarantor, actual or ostensible, relationship with each and every other Defendant during the course of events described herein, unless alleged otherwise.

15. Defendant was and is the employer of Plaintiff, the Class Members for all relevant

1 time periods. At any one time during the Class Period, Defendant employed approximately 280
2 non-exempt individuals in California. Due to turnover during the Class Period, the total number
3 of Class Members is estimated to be over 400.

4 5 **CLASS ACTION ALLEGATIONS**

6 16. Defendant operates a company that facilitates e-commerce transactions for large
7 parcel merchandise, including managing warehouses to fulfill customer orders.

8 17. Plaintiff brings this action, on behalf of herself, the Aggrieved Employees and all
9 others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. Plaintiff
10 seeks to represent Classes composed of and defined as:

11 All non-exempt individuals who or were employed by GigaCloud Technologies, Inc. in
12 the State of California during the Class Period and ending when notice to the Class is
sent (hereinafter referred to as “Class Members” or the “Class”).

- 13 a. All Class Members who were issued one or more wage statements from
14 Defendant during the period from one year prior to the filing of this
15 Complaint through judgment (hereinafter referred to as “Wage Statement
Class Members”);
- 16 b. All Class Members who did not receive their timely ten-minute, duty free
17 rest breaks while working for Defendant during the Class Period
18 (hereinafter referred to as “Rest Break Class Members”);
- 19 c. All Class Members who did not receive their timely thirty-minute meal
20 break on or before the fifth hour of work while working for Defendant on
21 shifts greater than five hours during the Class Period (hereinafter referred
22 to as “Meal Break Class Members”);
- 23 d. All Class Members who did not receive their overtime wages from
24 Defendant during the Class Period (“Overtime Wage Class Members”)
- 25 e. All Class Members who did not receive their minimum wages from
26 Defendant during the Class Period (“Minimum Wage Class Members”)

27 18. This action has been brought and may properly be maintained as a class action
28 under Code of Civil Procedure § 382 because there is a well-defined community of interest in
the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative

of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believe that Defendant has, on average, at any one time during the Class Period employed over 280 Class Members as non-exempt employees who were subject to Defendant's unlawful policies. Due to turnover, the total number of Class Members is estimated to be more than 400. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

i. Whether Defendant violated Labor Code sections 226.7 and 512 and Section 11 of IWC Wage Order No. 9 by failing to provide timely, duty-free meal periods to Plaintiff and the members of the Meal Break Class in California during the Class Period;

ii. Whether Defendant violated Labor Code section 226.7 by failing to provide one hour of premium pay to each member of the Meal Break Class for each day that a timely, duty-free meal period was not provided in California during the Class Period;

iii. Whether Defendant violated Labor Code section 226.7 and Section 12 of IWC Wage Order No. 9 by failing to provide timely, duty-free rest periods to Plaintiff and the members of the Rest Break Class in California during the Class Period;

- 1 iv. Whether Defendant violated Labor Code section 226.7 by failing to
2 provide one hour of premium pay to each member of the Rest Break
3 Class for each day that a timely, duty-free rest period was not provided
4 in California during the Class Period;
- 5 v. Whether Defendant failed to provide Plaintiff and the members of
6 the Wage Statement Class complete wage statements in violation of
7 Labor Code Section 226(a);
- 8 vi. Whether Defendant violated Sections 204 and 210 of the Labor
9 Code by failing to pay Plaintiff and Plaintiff's Class Members all
10 wages due on a timely basis;
- 11 vii. Whether Defendant violated Sections 510, 1194, and 1198 of the
12 Labor Code by failing to pay Plaintiff and Plaintiff's Class
13 Members all overtime wages due;
- 14 viii. Whether Defendant engaged in unfair practices and violated section
15 17200 of the California Business and Professions Code by failing
16 to provide Plaintiff and the members of the Meal Break Class with
17 timely, duty-free meal breaks during the Class Period;
- 18 ix. Whether Defendant engaged in an unfair practice and violated
19 section 17200 of the California Business and Professions Code by
20 failing to provide Plaintiff and members of the Meal Break Class
21 with meal period premiums for each day they were not provided a
22 compliant meal break;
- 23 x. Whether Defendant engaged in unfair practices and violated section
24 17200 of the California Business and Professions Code by failing
25 to provide Plaintiff and the members of the Rest Break Class with
26 timely, duty-free rest breaks during the Class Period;
- 27 xi. Whether Defendant engaged in an unfair practice and violated
28

1 section 17200 of the California Business and Professions Code by
2 failing to provide Plaintiff and members of the Rest Break Class
3 with rest period premiums for each day they were not provided a
4 compliant meal break;

5 xii. Whether Plaintiff and the Class are entitled to restitution under
6 Business and Professions Code § 17200;

7 xiii. The proper formula(s) for calculating damages, interest, and
8 restitution owed to Plaintiff and the Class Members;

9 xiv. The nature and extent of class-wide damages.

10 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
11 Plaintiff and Class Members sustained injuries and damages, and were
12 deprived of property rightly belonging to them, arising out of and caused
13 by Defendant's common course of conduct in violation of law as alleged
14 herein, in similar ways and for the same types of unpaid wages.

15 d. Adequacy of Representation: Plaintiff is a member of the Class and will
16 fairly and adequately represent and protect the interests of the Class and
17 Class Members. Plaintiff's interests do not conflict with those of Class and
18 Class Members. Counsel who represents Plaintiff is competent and
19 experienced in litigating large wage and hour class actions, including
20 numerous cases virtually identical to this one (i.e., wage and hour class
21 action cases), and other employment class actions, and will devote
22 sufficient time and resources to the case and otherwise adequately represent
23 the Class and Class Members.

24 e. Superiority of Class Action: A class action is superior to other available
25 means for the fair and efficient adjudication of this controversy. Individual
26 joinder of all Class Members is not practicable, and questions of law and
27 fact common to the Class predominate over any questions affecting only
28

1 individual members of the Class. Each Class Member has been damaged
2 or may be damaged in the future by reason of Defendant's unlawful policies
3 and/or practices. Certification of this case as a class action will allow those
4 similarly situated persons to litigate their claims in the manner that is most
5 efficient and economical for the parties and the judicial system. Certifying
6 this case as a class action is superior because it allows for efficient and full
7 disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining
8 its unlawful break and compensation policies and will thereby effectuate
9 California's strong public policy of protecting employees from deprivation
10 or offsetting of compensation earned in their employment. If this action is
11 not certified as a Class Action, it will be impossible as a practical matter,
12 for many or most Class Members to bring individual actions to recover
13 monies unlawfully withheld from their lawful compensation due from
14 Defendant, due to the relatively small amounts of such individual
15 recoveries relative to the costs and burdens of litigation.
16

17 19. Labor Code § 512 requires employers to provide employees with a thirty (30)
18 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's
19 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive
20 a second thirty (30) minute uninterrupted and duty-free meal period.

21 20. Under Labor Code § 512, if an employer maintains a uniform policy that does
22 not authorize and permit the amount of duty-free mealtime on or before the fifth hour of work
23 as called for under the law (as specified in the applicable Wage Order), "it has violated the wage
24 order and is liable." The *Brinker* Court explained in the context of rest breaks that employer
25 liability attaches from adopting an unlawful policy.

26 21. Here, Defendant violated and continues to violate Labor Code § 512 and IWC
27 Wage Order 9-2001 § 11 by, among other things, failing to provide and schedule duty-free meal
28 breaks on or before the fifth hour of work to Meal Break Class Members, the Aggrieved

1 Employees and failed to advise all other Meal Break Class Members of their meal break rights
2 with respect to the timing of meal breaks, failed to provide Meal Break Class Members with
3 thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failed
4 to pay meal break premiums for late meal breaks. Instead, Defendant often required employees
5 to take their meal breaks at the end of their shifts without paying any late meal break premiums.
6 As a result of Defendant's failure to authorize or permit lawful and timely meal periods,
7 Plaintiff, the Aggrieved employees and the other Meal Period Class Members frequently did not
8 receive compliant duty-free meal periods within the first five (5) hours of their work.
9 Furthermore, when Defendant paid missed or late meal break premiums, thereby admitting to
10 226.7 and 512 violations.

11 22. Under Labor Code § 226.7, if an employer maintains a uniform policy that does
12 not authorize and permit the amount of rest time on the schedule called for under the law (as
13 specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is
14 liable." The *Brinker* Court explained in the context of rest breaks that employer liability
15 attaches from adopting an unlawful policy:

16 An employer is required to authorize and permit the amount of rest break
17 time called for under the wage order for its industry. If it does not—if, for
18 example, it adopts a uniform policy authorizing and permitting only one
19 rest break for employees working a seven-hour shift when two are
20 required—**it has violated the wage order and is liable.** (*Brinker Rest. Corp.*
v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

21 23. Here, Defendant did not authorize Plaintiff, the Aggrieved Employees the Rest
22 Break Class Members to take their ten-minute rest breaks during each 4 hours of work or major
23 fraction thereof during their shifts. Moreover, Defendant's scheduling practices were often rest
24 break preclusive for Rest Break Class Members.

25 24. Code § 226 obligates employers, semi-monthly or at the time of each payment to
26 furnish an itemized wage statement in writing showing:

- 27 (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if
28 the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of

- the employee may be aggregated and shown as one item;
- (5) net wages earned;
 - (6) the inclusive dates of the period for which the employee is paid;
 - (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
 - (8) the name and address of the legal entity that is the employer...; and,
 - (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

25. Defendant's wage statements issued fail to include the start date of each pay period in violation of Labor Code § 226(a)(6). Moreover, due to, *inter alia*, Defendant's failure to pay Plaintiff, the Aggrieved employees and the Class Members for all their wages, the accurate rate of overtime, all meal and rest break premiums, the wage statements issued by Defendant to Plaintiff, the Aggrieved employees and the Wage Statement Class Members do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

26. Defendant's violation of Labor Code § 226 was knowing and intentional. See *Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

27. Defendant's failure to furnish accurate itemized wage statements has caused Plaintiff, the Aggrieved employees, the Wage Statement Class Members to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. See *Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage

statements violated California Labor Code by not including, inter alia, total hours worked giving rise to claims under both Section 226 and for PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where employees cannot easily determine the gross or net wages earned by the employee during the pay period).

28. Labor Code § 226(e) provides that an employee is entitled to recover \$50.00 for each initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000.00, as well as an award of costs and reasonable attorney’s fees, for all pay periods in which the employer failed to provide accurate itemized statements to the employee causing the employee to suffer injury.

29. Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty of two hundred fifty dollars (\$250.00) per employee per violation in an initial violation and one thousand dollars (\$1,000.00) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendant failed to provide Plaintiff and the Wage Statement Class Members with accurate itemized wage statements.

30. Labor Code § 204 expressly requires that “[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.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.

31. Due to Defendant’s failure to pay Plaintiff, the aggrieved employees, the Class all meal and rest break period premiums owed, all the minimum wages, Defendant violated Labor Code § 204 by failing to pay all wages due within seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S.

1 Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that
2 a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

3 32. Labor Code § 210 provides that “in addition to, an entirely independent and apart
4 from, any other penalty provided in this article, every person who fails to pay the wages of each
5 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
6 any initial violation, one hundred dollars (\$100.00) for each failure to pay each employee; (2)
7 For each subsequent violation, or any willful or intentional violation, two hundred dollars
8 (\$200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As
9 a result of the faulty compensation policies and practices described in detail above, Plaintiff,
10 and the Class are entitled to recover penalties under Labor Code § 210.

11 33. At all relevant times, Plaintiff worked for Defendant as a non-exempt, hourly-
12 paid employee for approximately 4 years. Plaintiff was hired by Defendant’s Warehouse
13 Manager, to work as a Warehouse Assistant on or around May 28, 2020, and is currently still
14 employed by Defendant. Plaintiff at the time of her hiring earned \$17.00 per hour, however,
15 now earns \$22.55 per hour.

16 34. Due to Plaintiff being the only one to work her position daily, understaffing, and
17 high customer demands, Defendant’s employees, class members and the aggrieved employees
18 were not permitted to take compliant rest breaks, as they are often forced to take late, short, or
19 interrupted rest breaks, or else skip their rest breaks entirely. For example, Plaintiff was never
20 authorized to take a 10-minute rest break when working shifts of longer than 3.5 hours. Despite
21 the foregoing, Defendant never paid any premium wages for shifts that Plaintiff did not receive
22 compliant rest breaks.

23 35. For the same reason, Defendant’s employees are not permitted to take compliant
24 meal breaks, and are often subjected to late, short, missed, and/or interrupted meal breaks due to
25 understaffing and high customer demands. For example, Plaintiff often worked shifts of five
26 hours or more during which she was not able to clock out and take a meal break. Defendant
27 required its employees to clock out for meal breaks, if and when they were able to take them.

28 36. On the rare occasion that Plaintiff was allowed to take a meal break, Defendant

1 required its employees to remain on its premises to eat their meals because there may be sudden
2 work that arose during the break. Additionally, because Plaintiff was the only worker on the
3 shift at the time, she would often have to forego her meal break to attend to the work. Despite
4 the foregoing, Defendant never paid any premium wages for shifts that Plaintiff did not receive
5 compliant meal breaks.

6 37. Upon information and belief, Defendant would unlawfully and without Plaintiff
7 and Plaintiff's Class's authorization, modify, edit, and alter Plaintiff's timesheets to reflect less
8 hours than actually worked to avoid paying for overtime work and being subject to meal break
9 penalties.

10 38. On or around March 27, 2024, Plaintiff complained to Defendant about their
11 time recording practices and expressed her concern that she was not being properly
12 compensated. As a matter of fact, Defendant failed to include all Plaintiff's bonuses and
13 commissions in the adjusted rate of pay for all his overtime wages. Plaintiff also complained
14 about the improper modification and editing of her timesheet which resulted in reductions to her
15 work hours. In response to Plaintiff's inquiry, Plaintiff's manager simply acknowledged that he
16 "needed more time to investigate".

17 39. Upon information and belief, Defendant was engaged in an unlawful practice of
18 editing and modifying its employees' actual hours worked in such a manner that was not fair
19 and neutral. Moreover, Defendant failed to include all Plaintiff's bonuses and commissions in
20 the adjusted rate of pay for all his overtime wages. As a result, over a period of time,
21 Defendant's sustained policy and practices resulted in failing to properly compensate Plaintiff,
22 the Class, and the Aggrieved Employees for all time they actually worked.

23 40. As discussed above, Plaintiff was not paid timely wages for all hours worked.
24 Specifically, she was not compensated for unpaid wages due to Defendant's
25 unlawfulmodification practices, as well as all meal and rest break premiums owed for days in
26 which she was not permitted to take compliant meal and rest breaks.

27 41. Based on the foregoing, Defendant also failed to issue accurate, itemized wage
28 statements to Plaintiff, the Class and the Aggrieved Employees, because the wage statements

1 did not include all wages and premiums owed, as discussed above. The wage statements also
2 included unlawful modification and unauthorized edits and failed to include bonuses and the
3 adjusted rate of pay for overtime compensation. Accordingly, Defendant furnished Plaintiff, the
4 Class and the Aggrieved Employees with wage statements representing an inaccurate number of
5 hours worked, inaccurate gross and net wages, unlawful deductions, and inaccurate
6 corresponding number of hours worked at each hourly rate.

7 **PAGA ADMINISTRATIVE PREREQUISITE**

8 42. Under the facts and circumstances set forth above, a class action is superior. The
9 Private Attorney General Act (“PAGA”) permits an “Aggrieved Employee” to recover penalties
10 on behalf of herself or himself as well as on behalf of all Aggrieved Employees as a result of the
11 employer’s violation of certain sections of California Labor Code. In this case, Aggrieved
12 Employees are all non-exempt individuals who were employed by Defendant in the State of
13 California during the PAGA period.

14 43. Plaintiff Wang qualifies as an Aggrieved Employee as defined in Labor §
15 2699(a), in that she was employed by Defendant in the State of California and worked one or
16 more shifts or longer during the PAGA period.

17 44. By this Complaint, Plaintiff Wang brings this case as a representative action
18 seeking civil penalties for the State of California in a representative capacity, as provided for in
19 PAGA, to the extent permitted by law, as an Aggrieved Employee and on behalf of all other
20 Aggrieved Employees who were employed by Defendant and subject to the violations set forth
21 in Plaintiff’s notice to the Labor and Workforce Development Agency (“LWDA”) and the
22 employer, including but not limited to: Labor Code §§201, 202, 203, 204, 226, 226.7, 512.

23 45. Under Labor Code section 2699.3(a), a plaintiff may bring a cause of action
24 under PAGA only after giving the LWDA and the employer notice of the Labor Code sections
25 alleged to have been violated, and after receiving notice from the LWDA of its intention not to
26 investigate, or after 65 days have passed without notice from the LWDA.

27 46. On May 22, 2024, prior to the filing of the complaint in this action, Plaintiff
28 Wang gave written notice of the specified provisions of the Labor Code alleged to have been

1 violated, including the facts and theories to support the alleged violations, as required by Labor
2 Code section 2699.3. This written notice was given via certified mail to Defendant and
3 electronically to the LWDA, LWDA Case No. LWDA-CM-1029815-24. A true and correct
4 copy of Plaintiff's notice to the LWDA and to Defendant dated May 22, 2024, is attached hereto
5 as **Exhibit A**.

6 47. Under Labor Code section 2699.3(a)(2)(C), "Notwithstanding any other
7 provision of law, a plaintiff may as a matter of right amend an existing complaint to add a cause
8 of action arising under this part at any time within 60 days of the time periods specified in this
9 part."

10 **FIRST CAUSE OF ACTION**

11 **Failure to Provide Compliant Meal Breaks or Pay Premiums in Violation of Labor Code §§ 226.7 and 512 and Section 11 of the Applicable Wage Order**

12 **On Behalf of Plaintiff, the Aggrieved Employees, and the Meal Break Class Against 13 Defendant**

14 48. Plaintiff, the Class, and the Aggrieved Employees re-allege and incorporate by
15 reference each and every allegation set forth in the preceding paragraphs.

16 49. California Labor Code § 516 provides that the IWC may adopt working
17 condition orders with respect to meal breaks for any workers in California. *See also* Lab. Code §
18 1198.

19 50. California Labor Code § 226.7(a) provides that no employer shall require an
20 employee to work during a meal period mandated by an applicable statute, regulation, standard,
21 or order of the IWC.

22 51. Pursuant to Labor Code section 512, no employer shall employ any person for a
23 work period of more than five (5) hours without providing a meal period of not less than thirty
24 (30) minutes. *Id.* at subd. (a). However, if the total work period for that day is less than six
25 hours, then the meal period may be waived by mutual consent. *Id.*; *see also* section 11(A) and
26 (C) of the applicable wage order.

27 52. The first meal period must start prior to the end of the employee's fifth hour of
28 work if the employee is working less than ten (10) hours. *Brinker Restaurant Corp. v Superior*

1 Court (2012) 53 Cal. 4th 1004, 1041. During the meal period, the employee is to be completely
2 free of the employer's control and must not be required to perform any work for the employer.
3 *Id.* at 1040-1041.

4 53. If an employer fails to provide a legally compliant, duty-free meal period, the
5 employee is entitled to one hour of "premium pay," or an additional hour of pay at the
6 employee's regular rate of compensation for each workday that the meal period was not
7 provided. *See* Lab. Code § 226.7(c); section 11(B) of the applicable wage order.

8 54. Here, Defendant violated and continues to violate Labor Code § 512 and IWC
9 Wage Order 9-2001 § 11 by, among other things, failing to provide and schedule duty-free meal
10 breaks on or before the fifth hour of work for Meal Break Class Member and the Aggrieved
11 Employees and failed to advise all other Meal Break Class Members and the Aggrieved
12 Employees of their meal break rights with respect to the timing of meal breaks, failed to provide
13 Meal Break Class Members with thirty-minute, uninterrupted meal periods within the first five
14 (5) hours of their shifts, and failed to pay meal break premiums for late meal breaks. Instead,
15 Defendant often required employees to take their breaks while still being vigilant of tasks that
16 would require the immediate attention of Plaintiff, Plaintiff's Class and the Aggrieved
17 employees. As a result of Defendant's failure to authorize or permit lawful, uninterrupted, and
18 timely meal periods, Plaintiff and the other Class members and Meal Period Class Members
19 rarely received compliant duty-free meal periods within the first five (5) hours of their work.

20 55. Defendant failed to pay an additional hour of pay to Plaintiff, the Aggrieved
21 Employees and Class Members when meal periods were interrupted and/or not taken as
22 required by Labor Code section 226.7(c).

23 56. Plaintiff individually, and on behalf of the Meal Break Class and the Aggrieved
24 Employees, requests recovery of meal period compensation pursuant to *Labor Code* section
25 226.7 which they are owed beginning four (4) years prior to filing this action as well as the
26 assessment of any statutory penalties against Defendant, and each of them, in a sum as provided
27 by the Labor Code and/or other statutes.

28 //

SECOND CAUSE OF ACTION
Failure to Provide Compliant Rest Breaks or Pay Premiums
in Violation of Labor Code § 226.7
and Section 12 of the Applicable Wage Order
On Behalf of Plaintiff, the Aggrieved Employees, and the Rest Break Class Against
Defendant

57. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

58. California Labor Code § 516 provides that the IWC may adopt working condition orders with respect to rest breaks for any workers in California. *See also* Lab. Code § 1198.

59. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

60. Here, Defendant did not authorize Plaintiff, the Rest Break Class Members and the Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Plaintiff, the Rest Break Class Members and the Aggrieved Employees did not receive timely rest breaks during their shifts. Accordingly, Defendant is liable to Plaintiff, the Rest Break Class Members and the Aggrieved Employees for rest break premiums for all such shifts on which they were not able to take compliant rest breaks.

61. Plaintiff, on behalf herself and all employees and the Aggrieved Employees similarly situated, requests recovery of rest period compensation pursuant to *Labor Code*

1 section 226.7, which they are owed beginning four (4) years prior to filing this action as well as
2 the assessment of any statutory penalties against Defendant, and each of them, in a sum as
3 provided by the Labor Code and/or any other statute.

4 **THIRD CAUSE OF ACTION**

5 **Failure to Pay for All Overtime Worked**

6 **(Labor Code sections 510, 1194, and 1198**

7 **On Behalf of Plaintiff, the Aggrieved Employees, and the Overtime Wage Class Against**
8 **Defendant**

9 62. Plaintiff, Class Members and the Aggrieved Employees incorporate by reference
10 and re-allege as if fully stated herein, the material allegations set out in each and all previous
11 paragraphs of this Complaint.

12 63. At all relevant times during the applicable limitations period, Plaintiff, Class
13 Members and the Aggrieved employees have been non-exempt employees of Defendant and are
14 entitled to the benefits of Labor Code sections 510 and 1194 and the pertinent Wage Order.

15 64. IWC Wage Order 9-2001, section 2 defines “hours worked” as “the time during
16 which an employee is subject to the control of an employer, and includes all the time the
17 employee is suffered or permitted to work, whether or not required to do so.”

18 65. In relevant part, section 3 of the applicable Wage Order states: (A) Daily
19 Overtime- General Provisions:

20 66. (1) The following overtime provisions are applicable to employees 18 years of
21 age or over and to employees 16 or 17 years of age who are not required by law to attend school
22 and are not otherwise prohibited by law from engaging in the subject work. Such employees
23 shall not be employed more than eight (8) hours in any workday or more than 40 hours in any
24 workweek unless the employee receives one and one-half (1 ½) times such employee’s regular
25 rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor
26 constitutes a day’s work. Employment beyond eight (8) hours in any workday or more than six
27 (6) days in any workweek is permissible provided the employee is compensated for such
28 overtime at not less than:

67. (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
worked in excess of eight (8) hours up to and including twelve (12) hours in any workday, and

1 for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek;
2 and

3 68. (b) Double the employee's regular rate of pay for all hours worked in excess of
4 12 hours in any workday and for all hours worked in excess of eight (8) hours on the seventh
5 (7th) consecutive day of work in a workweek.

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

9 70. Labor Code section 510 states: "Eight hours of labor constitutes a day's work.
10 Any work in excess of eight hours in one workday and any work in excess of 40 hours in any
11 one workweek and the first eight hours worked on the seventh day of work in any one
12 workweek shall be compensated at the rate of no less than one and one-half times the regular
13 rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at
14 the rate of no less than twice the regular rate of pay for an employee. In addition, any work in
15 excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no
16 less than twice the regular rate of pay of an employee. Nothing in this section requires an
17 employer to combine more than one rate of overtime compensation in order to calculate the
18 amount to be paid to an employee for any hour of overtime work."

19 71. With respect to overtime wages, the regular rate of pay under California law
20 must include "all remuneration for employment paid to, on behalf of, the employee." O.L.
21 2002.06.14 (quoting 29 U.S.C. Section 207(e)). This requirement includes, but is not limited to,
22 commissions and nondiscretionary bonuses. (See *Huntington Memorial Hosp. v. Superior Court*
23 (2005) 131 Cal App.4th 893, 904-05.)

24 72. During the relevant timeframe, Plaintiff, the Aggrieved Employees and Class
25 Members worked more than eight hours a day and more than 40 hours a week and was not paid
26 all the overtime wages he was entitled to. Defendant's wage statements issued to Plaintiff, the
27 Aggrieved Employees, and Class Members misstated, and under-reported hours worked in a
28 misguided attempt to cover up this failure to pay overtime. Additionally, Defendant would

1 unlawfully and without Plaintiff, the Aggrieved Employees and Plaintiff's Class's authorization,
2 modify and alter Plaintiff's timesheets to reflect less hours than actually worked to avoid paying
3 overtime wages. Additionally, Defendant failed to include all Plaintiff's bonuses and
4 commissions in the adjusted rate of pay for all his overtime wages

5 73. Plaintiff, the Aggrieved employees and Class Members have been damaged in a
6 sum to be proven and request relief as described below.

7 **FOURTH CAUSE OF ACTION**
8 **Failure To Pay Minimum Wages**
9 **in Violation of Cal. Labor Code §§ 204, 510, 1194, 1197**
10 **On Behalf of Plaintiff, the Aggrieved Employees and the Wage Statement Class Against**
11 **Defendant**

12 74. Plaintiff, Class Members and the Aggrieved Employees incorporate by reference
13 and re-allege as if fully stated herein, the material allegations set out in each and all previous
14 paragraphs of this Complaint.

15 75. Any employee receiving less than the legal minimum wage or legal overtime
16 compensation is entitled to recover in a civil action the amount of unpaid wages, attorneys' fees
17 and costs of suit. (Lab. Code, § 1194, subd. (a).)

18 76. Labor Code section 1182.12 provides for employers who employed 26 or more
19 people from January 18, 2018, to December 31, 2018, the minimum wage rate in California was
20 eleven dollars (\$11.00) per hour. From January 1, 2019, to December 31, 2019, the minimum
21 wage rate in California is twelve dollars (\$12.00) per hour. From January 1, 2020, to December
22 31, 2020, the minimum wage rate in California is thirteen dollars (\$13.00) per hour. From
23 January 1, 2021, to December 31, 2021, the minimum wage rate in California is fourteen dollars
24 (\$14.00) per hour. From January 1, 2022, the minimum wage rate in California, is fifteen dollars
25 (\$15.00) per hour. Plaintiff is informed and believes Defendant employed more than twenty-six
26 (26) employees.

27 77. Notwithstanding any other provision of the Labor Code, hourly minimum wage
28 rates are set for all industries according to statute. (Lab. Code, § 1182.12.) Employers must pay
employees no less than minimum wage for each hour worked. (Lab. Code, § 1194.)

78. In any action to recover payment of wages less than the minimum wage an

1 employee shall be entitled to recover liquidated damages in an amount equal to the wages
2 unlawfully unpaid and interest thereon. (Lab. Code, § 1194.2.)

3 79. Any work in excess of eight (8) hours in any workday and any work in excess of
4 forty (40) hours in a workweek, shall be compensated at a rate of no less than one and one-half
5 times the regular rate of pay for an employee. (Lab. Code, § 510, subd. (a).) Any work in excess
6 of twelve (12) hours in a workday shall be compensated at the rate of twice the regular rate of
7 pay for an employee. (Lab. Code, § 510, subd. (a).)

8 80. All wages earned in employment are due and payable twice during each calendar
9 month on dates designated in advance by the employer. (Lab. Code, § 204.)

10 81. In case of a dispute over wages, the employer shall pay, without condition and
11 promptly under the Labor Code all wages conceded due, leaving to the employee all remedies
12 he/she is otherwise entitled to as to any balance claimed. (Lab. Code, § 206.)

13 82. At all relevant times herein, Plaintiff, Class Members and the Aggrieved
14 Employees were and are paid as non-exempt employees.

15 83. Defendant failed to compensate Plaintiff, the Class and the Aggrieved employees
16 for all wages worked. Specifically, Defendant failed to include all remuneration when
17 calculating Plaintiff the Class and the Aggrieved Employees accurate regular hours.
18 Additionally, Defendant would unlawfully and without Plaintiff the Aggrieved Employees,
19 Class' authorization, modify and alter Plaintiff's timesheets to reflect less hours than actually
20 worked.

21 84. Defendant had in place timesheet modification system that prevented Plaintiff
22 Class and the Aggrieved Employee to receive all their compensation. The timesheet
23 modification system put in place by Defendant did not allow Plaintiff, the Aggrieved employees
24 and the Class to receive their compensation. .Often Defendant changed the timesheet to reduce
25 the total amount of the hours worked and also reduced the hours worked in the beginning of
26 each shift to make it compliant. In this situation, the records shows that Plaintiff, the class
27 members and the Aggrieved employees received their timely meal break. This further resulted
28 in Plaintiff, the Aggrieved employees and the Class to not receive all their wages. "If an

1 employer . . . can capture and has captured the exact amount of time an employee has worked
2 during a shift, the employer must pay the employee for ‘all the time’ worked.” *Camp v. Home*
3 *Depot U.S.A., Inc.* (2022) 84 Cal.App.5th 638, 660-661.

4 85. As a consequence, Defendant failed to pay Plaintiff, the Aggrieved employees
5 and the Class all minimum regular wages for all hours worked, including hours in excess of
6 over eight (8) per day and forty (40) per workweek. Pursuant to Labor Code sections, *inter alia*,
7 204, 510, 1182.12, and 1194, the Plaintiff Class seeks the payment of all minimum, regular,
8 compensation which they earned and accrued for four (4) years prior to filing this complaint,
9 according to proof.

10 86. Additionally, Plaintiff, the Aggrieved employees and the Class are entitled to
11 liquidated damages, attorneys’ fees, and costs pursuant to Labor Code section 1194 and Code of
12 Civil Procedure section 1021.5, and prejudgment interest.

13 **FIFTH CAUSE OF ACTION**

14 **Section 210 Penalties for Failure to Pay Timely Wages
for Violation of Labor Code § 204**

15 **On Behalf of Plaintiff, the Aggrieved employees and the Class Against Defendant**

16 87. Plaintiff, Class Members and the Aggrieved Employees incorporate by reference
17 and re-allege as if fully stated herein, the material allegations set out in each and all previous
18 paragraphs of this Complaint.

19 88. Labor Code section 204 expressly requires that “[a]ll wages...earned by any
20 person in any employment are due and payable twice during each calendar month, on days
21 designated in advance by the employer as the regular paydays.”

22 89. Premium pay constitutes “wages”, as that term is used in the Labor Code.
23 *Naranjo v. Spectrum Security Services, Inc.* (2022), 13 Cal. 5th 93, 118 (premium pay is fairly
24 understood as falling within the Labor Code’s general definition of wages).

25 90. Due to Defendant’s failure to pay Plaintiff, the Aggrieved Employees and the
26 Wage Statement Class the correct and adjusted rate of pay and all meal and rest break period
27 premiums owed, Defendant violated Labor Code § 204 by failing to pay all wages due within
28 seven (7) days of the close of the payroll period on a regular and consistent basis. *See Parson v.*

1 *Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal.
2 May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims
3 under Labor Code §§ 203 and 204).

4 91. Labor Code § 210 provides that “in addition to, an entirely independent and apart
5 from, any other penalty provided in this article, every person who fails to pay the wages of each
6 employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1) For
7 any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
8 each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
9 each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of
10 the faulty compensation policies and practices described in detail above, Plaintiff and the Class
11 are entitled to recover penalties under Labor Code § 210.

12 92. Labor Code section, 226 subdivision (e) provides that if an employer knowingly
13 and intentionally fails to provide a statement itemizing, inter alia, the gross and net wages
14 earned, the total hours worked by the employee and the applicable hourly overtime rates,
15 causing the employee injury, then the employee is entitled to recover the greater of all actual
16 damages or fifty dollars (\$50.00) for the initial violation and one hundred dollars (\$100.00) for
17 each subsequent violation, up to four thousand dollars (\$4,000.00).

18 93. Industrial Welfare Commission (“IWC”) Wage Order Number 9-2001,
19 paragraph (7)(3) requires that every employer shall keep accurate information with respect to
20 each employee, including time records showing when each employee begins and ends each
21 work period, the total daily hours worked by each employee and the total hours worked in each
22 payroll period, and applicable rates of pay. Plaintiff is informed and believes that Defendant
23 willfully and intentionally failed to make and/or keep records which accurately reflect the hours
24 and wages worked by Plaintiff and the Class. Specifically, Plaintiff believes that Defendant’s
25 records do not accurately reflect the wages owed in the form of the lawful minimum wage and
26 statutory premiums for non-compliant meal and rest periods. Additionally, Plaintiff believes
27 Defendant knowingly and willingly altered and modified Plaintiff and others’ timesheets to
28 avoid paying overtime wages and to avoid being subjected to meal break penalties.

94. As described above, Plaintiff is informed and believes that Defendant willfully failed to make or keep accurate records for Plaintiff and the Class by failing to pay all wages owed, including minimum wage, by failing to pay off-the-clock or by implementing editing practices unfavorable to Plaintiff, the Aggrieved employees and the Class and by failing to maintain accurate records. Additionally, Plaintiff believes Defendant knowingly and willingly altered, modified, and edited timesheets of Plaintiff and others to avoid paying correct wages to Plaintiff.

95. Plaintiff is informed and believes that Defendant's failure to keep and maintain accurate records and information and to provide Plaintiff, the Aggrieved employees and the Class accurate itemized wage statements, as described above, was knowing and intentional, and Plaintiff, the Aggrieved employees and the Class Members are entitled to statutory penalties for each pay period in which a violation occurred. As such, Plaintiff seeks penalties under Labor Code section 226, subdivision (e). Plaintiff further seeks recovery of attorneys' fees and costs pursuant to Labor Code section 226, subdivision (e), and as otherwise permitted by law.

SIXTH CAUSE OF ACTION

**Failure to Provide and Maintain Accurate Itemized Wage Statements
in Violation of Labor Code §§ 226(a), 1174(d)
and Section 7 of the Applicable Wage Order
On Behalf of Plaintiff, the Plaintiff's Class, and the Aggrieved Employees Against
Defendant**

96. Plaintiff, Class Members and the Aggrieved Employees incorporate by reference and re-allege as if fully stated herein, the material allegations set out in each and all previous paragraphs of this Complaint.

97. An employer has an affirmative duty to track employee’s hours worked and meal periods. *See* Section 7(A) of the applicable wage order (“Every employer shall keep accurate information with respect to each employee including . . . time records showing when the employee begins each work period[,] [m]eal periods[,] and total daily worked shall also be recorded.”)

98. Labor Code section 1174 requires employers to keep accurate payroll records. Labor Code section 1174.5 provides:

Any person employing labor who willfully fails to maintain . . . accurate and complete records required by subdivision (d) of Section 1174. . . shall be subject to a civil penalty of five hundred dollars (\$500).

99. As set forth above, Defendant's wage statements issued fail to include the correct name of Defendant on their paystubs. Additionally, Defendant's failure to pay Plaintiff, the other Wage Statement Class Members and the Aggrieved employees for all meal and rest break premiums), the wage statements issued by Defendant to Plaintiff and the other Wage Statement Class Members do not indicate the correct amount of gross wages earned, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

100. Plaintiff believes Defendant knowingly and willingly altered and modified Plaintiff and others' timesheets without Plaintiff's authorization to avoid paying overtime wages and to avoid being subjected to meal and rest break penalties.

101. Defendant's violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

102. Defendant's failure to furnish accurate and complete itemized wage statements has caused Plaintiff, the other Wage Statement Class Members and the Aggrieved employees to incur economic damages in that they were not aware that they were owed and not paid appropriate premiums for their non-compliant statutory rest breaks and meal periods. *See Cicairos v. Summit Logistics*, 133 Cal.App.4th 949, 954 ("If it is left to the employee to add up the daily hours shown on the time cards or other records so that the employee must perform arithmetic computations to determine the total hours worked during the pay period, the requirements of section 226 would not be met"); *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011) (wage statements violated California Labor Code by not

1 including, inter alia, total hours worked giving rise to claims under both Section 226 and for
2 PAGA penalties); Labor Code § 226(e)(2)(B) (clarifying that injury is established where the
3 wage statement violated Section 226(a)(1), (2), or (5), among other provisions, and where
4 employees cannot easily determine the gross or net wages earned by the employee during the
5 pay period). Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial
6 pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period,
7 not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay
8 periods in which the employer fails to provide accurate itemized statements to the employee
9 causing the employee to suffer injury.

10 **SEVENTH CAUSE OF ACTION**

11 **Unfair Business Practices**

12 **in Violation of Business & Professions Code §§ 17200 *et seq.***

13 **On Behalf of Plaintiff, the Plaintiff's Class, and the Aggrieved Employees Against**
14 **Defendant**

15 103. Plaintiff, Class Members and the Aggrieved Employees incorporate by reference
16 and re-allege as if fully stated herein, the material allegations set out in each and all previous
17 paragraphs of this Complaint.

18 104. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor
19 Code § 90.5(a) states that it is the public policy of California to vigorously enforce minimum
20 labor standards in order to ensure employees are not required to work under substandard and
21 unlawful conditions, and to protect employers who comply with the law from those who attempt
22 to gain competitive advantage at the expense of their workers by failing to comply with
23 minimum labor standards. Through its actions alleged herein, Defendant has engaged in unfair
24 competition within the meaning of the UCL, because Defendant's conduct has violated state
25 wage and hour laws as herein described.

26 105. Beginning at least four years prior to the filing of this Complaint, Defendant
27 committed, and continues to commit, acts of unfair competition, as defined in the UCL by
28 failing to timely pay all wages owed for all time worked, in violation of Labor Code § 204;
failing to authorize and permit legally compliant meal and rest breaks and/or pay premium pay
in violation of Labor Code §§ 226.7, 512, and sections 11 and 12 of the applicable wage order;

1 unlawful deductions in violation of Labor Code § 221; failing to provide and maintain accurate
2 wage statements in violation of Labor Code §§ 226(a), 1174(d); and section 7 of the applicable
3 wage order.

4 By its actions and omissions, Defendant has substantially injured Plaintiff, the
5 Class and the Aggrieved Employees. The harm to Plaintiff, the Class and the Aggrieved
6 employees resulting from Defendant's Labor Code and Wage Order violations outweighs the
7 utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described
8 herein constitute unfair business practices or acts within the meaning of the UCL.

9 **EIGHTH CAUSE OF ACTION**

10 **For Civil Penalties Pursuant to Private Attorneys General Act ("PAGA")**

11 **[Cal. Lab. Code §§ 2698, et seq.]**

12 **On Behalf of Plaintiff, Aggrieved Employees, and the Plaintiff Class Against Defendant**

13 106. Plaintiff, Class Members and the Aggrieved Employees incorporate by reference
14 and re-allege as if fully stated herein, the material allegations set out in each and all previous
15 paragraphs of this Complaint.

16 107. PAGA is a mechanism by which the State of California itself can enforce state
17 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
18 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
19 fundamentally a law enforcement action designed to protect the public and not to benefit private
20 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a means
21 of "deputizing" citizens as private attorneys general to enforce the Labor Code. In enacting
22 PAGA, the California Legislature specified that "it was ... in the public interest to allow
23 aggrieved employees, acting as private attorneys general to recover civil penalties for Labor
24 Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be subject to
25 arbitration.

26 108. Plaintiff brings this Representative Action on behalf of the State of California
27 with respect to herself, the Plaintiff Class, and all other current and former Aggrieved
28 Employees employed by Defendant during the PAGA Period.

109. At all relevant times, for the reasons described herein, and others, Plaintiff, the
Class Members, and the Aggrieved Employees were aggrieved employees of Defendant within

1 the meaning of Labor Code Section 2699(c).

2 110. Labor Code Sections 2699(a) and (g) authorize an Aggrieved Employee, like
3 Plaintiff Wang, on behalf of herself, the Class Members and other current or former employees,
4 to bring a civil action to recover civil penalties pursuant to the procedures specified in Labor
5 Code Section 2699.3.

6 111. Plaintiff Wang complied with the procedures for bringing suit specified in Labor
7 Code Section 2699.3. By certified letter, return receipt requested and electronic mail, dated May
8 22, 2024, Plaintiff gave written notice to the LWDA and to Defendant of the specific provisions
9 of the Labor Code alleged to have been violated, including the facts and theories to support the
10 alleged violations. See Exhibit A, attached hereto and incorporated by this reference herein.

11 112. As of July 30, 2024, sixty-five (65) days after serving the LWDA with notice of
12 Defendant's violations, the LWDA has not provided any notice by certified mail of its intent to
13 investigate the Defendant's alleged violations as mandated by Labor Code Section
14 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section 2699.3(a)(2)A, Plaintiff may
15 commence and is authorized to pursue this cause of action.

16 113. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff and the Aggrieved
17 Employees are entitled to civil penalties for Defendant's violations of Labor Code Section 201,
18 202, 204, 210, 226, 226.3, 226.7, 512 and 558, in the following amounts:

19 114. For violations of Labor Code Section 226(a), a civil penalty in the amount of two
20 hundred fifty dollars (\$250) for each Aggrieved Employee for any initial violation and one
21 thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

22 115. For violations of Labor Code Section 204, a civil penalty in the amount of one
23 hundred dollars (\$100) for each Aggrieved Employee for any initial violation and two hundred
24 dollars (\$200) for Aggrieved Employee for each subsequent violation [penalty per Labor Code
25 Section 210];

26 116. For violations of Labor Code Sections 226.7 and 512, a civil penalty in the
27 amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for the initial violation
28 and one hundred dollars (\$100) for each underpaid Aggrieved Employee for each subsequent

violation [penalty per Labor Code Section 558];

117. For violations of Labor Code Section 2269(a), a civil penalty in the subsequent violation [penalty per Labor Code Section 226.3];

118. For violations of Labor Code Section 226(a), a civil penalty in the amount of two hundred fifty dollars (\$250) for each Aggrieved Employee for any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

119. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each Aggrieved Employee for any initial violation and two hundred dollars (\$200) for each Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 210];

120. For violations of Labor Code Sections 226.7 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid Aggrieved Employee for the initial violation and hundred dollars (\$100) for each underpaid Aggrieved Employee for each subsequent violation [penalty per Labor Code Section 558];

121. For violations of Labor Code Section 2269(a), a civil penalty in the subsequent violation [penalty per Labor Code Section 226.3];

122. For violation of Labor Code Sections 201, 202, and 204, one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation [penalty per Labor Code Section 2699(f)(2)]; and

123. For all provisions of the Labor Code for which a civil penalty is not specifically provided, Labor Code § 2699(f) imposes upon Defendant a penalty of one hundred dollars (\$100) for each Aggrieved Employee per pay period for the initial violation and two hundred dollars (\$200) for each Aggrieved Employee per pay period for each subsequent violation.

124. Plaintiff and the Aggrieved Employees are entitled to an award of reasonable attorneys' fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(g)(1).

125. To the extent that any of the conduct and violations alleged herein did not affect

1 Plaintiff or Class Members during the PAGA period, Plaintiff and Class Members seek
2 penalties for those violations that affected other Aggrieved Employees. (Carrington v. Starbucks
3 Corp. (2018) 30 Cal. App. 5th 504, 519; see also Huff v. Securitas Security Services USA, Inc.
4 (2018) 23 Cal. App. 5th 745, 751 [“PAGA allows an “aggrieved employee”—a person affected
5 by at least one Labor Code violation committed by an employer—to pursue penalties for all the
6 Labor Code violations committed by that employer.”], emphasis added, reh'g denied (June 13,
7 2018).

8 **PRAYER FOR RELIEF**

9 **WHEREFORE**, Plaintiff ASHLEY WANG, on behalf of herself, the members of the
10 Class, and the Aggrieved Employees, pray for judgment against Defendant GIGACLOUD
11 TECHNOLOGIES, INC. as follows:

12 1. An Order that this action may proceed and be maintained as a class action;

13 2. On the FIRST Cause of Action:

14 a. A declaratory judgment that Defendant violated California Labor Code
15 §§ 226.7, 512 and Section 11 of IWC Wage Order 9-2001;

16 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Meal
17 Break Class Members for an hour of pay for each day that a timely, duty-free meal period was
18 not provided during the Class Period; and

19 c. Reasonable attorneys’ fees, costs of suit, and prejudgment interest

20 3. On the SECOND Cause of Action:

21 a. A declaratory judgment that Defendant violated California Labor Code
22 § 226.7, and Section 12 of IWC Wage Order 9-2001;

23 b. Pursuant to Cal. Labor Code § 226.7, an award to Plaintiff and the Rest
24 Break Class Members for an hour of pay for each day that a timely, duty-free rest period was
25 not provided during the Class Period; and

26 c. Reasonable attorneys’ fees, costs of suit, and prejudgment interest.

27 4. On the THIRD Cause of Action:

1 a. A Declaratory judgment that Defendant has violated California Labor
2 Code sections 510, 1195, & 1198;

3 b. An award to Plaintiff and the other members of the Class in the amount
4 of their overtime unpaid wages; and

5 c. Reasonable attorneys' fees, costs of suit, and prejudgment interest.

6 5. On the FOURTH Cause of Action:

7 a. A Declaratory judgment that Defendant has violated California Labor
8 Code sections 1194;

9 b. An award to Plaintiff and the other members of the Class in the amount
10 of their unpaid minimum wages; and

11 c. Reasonable attorneys' fees, costs of suit and prejudgment interest.

12 6. On the FIFTH Cause of Action:

13 a. A declaratory judgment that Defendant violated California Labor Code
14 § 204 and § 210;

15 b. Pursuant to Labor Code § 204 and § 210, an award to Plaintiff and the
16 Class for penalties pursuant to Labor Code § 210; and

17 c. Reasonable attorneys' fees, costs of suit, and prejudgment interest.

18 6. On the SIXTH Cause of Action:

19 a. A declaratory judgment that Defendant violated California Labor Code
20 §226 by issuing inaccurate and/or incomplete wage statements that failed to include the start
21 date for each pay period, the correct amount of gross wages earned, net wages earned, or the
22 applicable hourly rates in effect during the pay period and the corresponding number of hours
23 worked at each hourly rate to Plaintiff and the wage statement Class Members; and

24 b. An award to Plaintiff and Class Members of \$50 for each initial pay
25 period, one year prior to the filing of this Complaint through the date of trial, in which a
26 violation of Section 226 occurred and \$100 for each subsequent pay period, one year prior to
27 the filing of this Complaint through the date of trial, in which a violation of Section 226
28

1 occurred, not to exceed \$4,000 for each member of the Class, as well as an award of costs and
2 reasonable attorney's fees, pursuant to Labor Code § 226(e);

3 c. Reasonable attorneys' fees, costs of suit, and prejudgment interest

4 7. On the SEVENTH Cause of Action:

5 a. That the Court finds and declares that Defendant has violated the UCL
6 and committed unfair and unlawful business practices by failing to pay meal and rest break
7 premiums, failing to pay minimum wages;

8 b. Restitution, including, but not limited to, the relief permitted by section
9 226.7 of the California Labor Code (i.e., pay as specified for meal and rest period premiums
10 to Plaintiff and the members of the Class during the Class Period;

11 c. Reasonable attorneys' fees, costs of suit, and prejudgment interest; and

12 d. All other relief as this Court deems proper.

13 8. On the EIGHTH cause of action:

14 a. A civil penalty against Defendant in the amount of \$100 for the initial violation
15 and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California
16 Labor Code for the LWDA and for Aggrieved Employees during all of the pay periods in the
17 one year preceding the filing of this Complaint through the present and on-going until the
18 violations are corrected, or this class is certified;

19 b. An award of reasonable attorney's fees against Defendant as specified in Labor
20 Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with
21 the PAGA claims;

22 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
23 connection with the LWDA's and Aggrieved Employees' PAGA claim against Defendant.
24

25 //

26 //

27 //

28 //

1 Dated: August 1, 2024

Respectfully Submitted,

2 **EMPLOYMENT RIGHTS LAWYERS, APC**

3 *Amir Seyedfarshi*
4 Amir Seyedfarshi, Esq.
5 Attorney for Plaintiff ASHLEY PENG PENG
6 WANG
7

8 **DEMAND FOR JURY TRIAL**

9 Plaintiff ASHLEY PENG PENG WANG hereby demands trial by jury on all issues so
10 triable in the complaint.

11 Dated: August 1, 2024

EMPLOYMENT RIGHTS LAWYERS, APC

13 *Amir Seyedfarshi*
14 Amir Seyedfarshi, Esq.
15 Attorney for Plaintiff ASHLEY PENG PENG
16 WANG
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

ATTORNEYS
SCOTT WARMUTH
DAN HOFFMAN
ANDREW MCCABE*
RONALD NORMAN
ERICA WILLIS*
ANGELA LOZANO
DANIEL DAILEY
PAM BRASWELL
ERIC JOHNSON
JAMES YOO
ANI GHAZARYAN
ANA SAHAGUN
BEN DJALDETY
* Certified Specialist, Workers'
Compensation Law
OF COUNSEL
WILLIAM L. NIU
Admitted in CA and NV
JEAN POWER
Admitted in CA and TX

LAW OFFICES OF
SCOTT WARMUTH
A PROFESSIONAL CORPORATION
17700 CASTLETON STREET
SUITE 168
CITY OF INDUSTRY, CALIFORNIA 91748
TEL: (626) 282-6868 | FAX: (626) 642-0808
TOLL FREE: (888) 517-9888
www.law888.com

ADDITIONAL OFFICES

SAN GABRIEL
FRESNO
SAN JOSE
SAN DIEGO
OAKLAND
RIVERSIDE
SACRAMENTO
BAKERSFIELD
LAS VEGAS, NV

HEARING REPRESENTATIVES
MAURICE LIN, J.D.
VANESSA DEMERY

May 22, 2024

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To:

CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY Attn. PAGA Administrator 1515 Clay Street, Suite 801 Oakland, California 94612 <i>Via Online Submission Only</i>	Department of Industrial Relations Accounting Unit 455 Golden Gate Avenue, 10th Floor San Francisco, California 94102
Gigacloud Technology – (USA) Inc. Lei Wu Agent for Service of Process 4388 Shirley Avenue El Monte, CA 91731	

From: Ms. Ashley Peng Peng Wang, on behalf of herself and all “aggrieved” California-based non-exempt employees of Gigacloud Technology – (USA) Inc.

c/o Rex Phillips, Esq.
LAW OFFICES OF SCOTT WARMUTH, APC.
17700 Castleton Street, Suite 168
City of Industry, CA, 91748

To Whom It May Concern:

This letter shall constitute notice under Labor Code section 2699.3 (hereinafter “PAGA Notice”). The \$75 filing fee for the PAGA Notice was paid online by credit card at the time this PAGA Notice was submitted online to the Department of Industrial Relations.

My firm has been retained by Ms. Ashley Peng Peng Wang concerning wage and hour violations and representative action pursuant to the Private Attorneys General Act of 2004, Labor Code § 2698 *et seq.* ("PAGA") against her former employer BRANDREP LLC. Our office is filing this written notice with the Labor and Workforce Development Agency ("LWDA") pursuant to the provisions of the California Labor Code §§ 2699, 2699.3, and 2698 *et seq.* The purpose of this letter is to inquire whether the LWDA intends to investigate and seek civil penalties associated with my client's allegations of violations of the Labor Code by his employer.

FACTUAL STATEMENT AND THEORIES OF LABOR CODE VIOLATIONS

Aggrieved employee Ms. Ashley Peng Peng Wang ("Employee") is employed by Gigacloud Technology – (USA) Inc. ("Employer") as an hourly non-exempt employee. The following is a summary of my client's wage and hour allegations on behalf of herself and other aggrieved employees working in California.

1. Failure to Pay the Applicable Overtime Rate of Pay for All Overtime Hours Worked.

Employee and other aggrieved employees are covered by Labor Code section 510 and applicable Wage Orders. Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of requiring its employees to work more than eight (8) hours per day, forty (40) hours per week, and/or seven (7) straight workdays in a workweek without paying them proper overtime wages, as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late from work without being able to clock in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, editing and/or manipulation of time entries to show less hours than actually worked, and failing to include all forms of remuneration, including non-discretionary bonuses, incentive pay, meal allowances, gift cards and other forms of remuneration into the regular rate of pay for the pay periods where overtime was worked and the additional compensation was earned for the purpose of calculating the overtime rate of pay. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code sections 510, 1194, and applicable Wage Orders based on its practice of providing total compensation that is less than the required legal overtime compensation for the overtime worked, entitling Employee and other aggrieved employees to damages. Employer would also be liable for civil penalties pursuant to Labor Code sections 558 and 2699.

2. Failure to Pay Minimum Wage for all hours worked.

Employee is informed and believes, and based thereon alleges, that Employer had and has a practice or policy of failing to compensate Employee and other aggrieved employees with minimum wages for all hours worked or otherwise under Employer's control as a result of, without limitation, failing to accurately track and/or pay for all minutes actually worked; engaging, suffering, or permitting employees to work off the clock, including, without limitation, by requiring employees: to come early to work and leave late from work without being able to clock

in for all that time, to complete pre-shift tasks before clocking in and post-shift tasks after clocking out, to clock out for meal periods and continue working, to clock out for rest periods, to attend company meetings off the clock, to make phone calls or drive off the clock; detrimental rounding of employee time entries; editing and/or manipulation of time entries to show less hours than actually worked; and failing to pay split shift premiums. Employee is informed and believes, and based thereon alleges, that Employer violated, without limitation, Labor Code sections 221, 223, 1197, 1182.12, Cal. Code Regs, title 8, section 110404(5)(A), and applicable Wage Orders based on its continued failure to pay minimum wages for all hours worked, entitling Employee and other aggrieved employees to actual and liquidated damages under, without limitation, Labor Code sections 1194 and 1194.2. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1197.1, and 2699.

3. Failure to Authorize or Permit Meal Periods in Violation of Labor Code §§ 512 and 226.7

Employee is informed and believes, and based thereon alleges, that Employer had and has a policy or practice of compelling its employees to work in excess of five (5) and ten (10) hours per day without being afforded uninterrupted, timely, and complete 30-minute meal periods or compensation in lieu thereof including, without limitation: by interrupting meal periods; not providing timely meal periods; failing to provide first and second meal periods; providing short meal periods; not permitting employees to leave the premises; otherwise requiring on-duty/on-call meal periods; and auto-deducting meal periods that could not be auto-deducted by law or during which employees worked. Consequently, Employee is informed and believes, and based thereon alleges, that Employer violated Labor Code section 512, entitling Employee and other aggrieved employees to premium payments under Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant meal periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant meal periods, as well as for failing to provide premium pay under Labor Code section 226.7.

4. Failure to Authorize or Permit Rest Periods in Violation of Labor Code § 226.7

Employee is informed and believes, and based thereon alleges, that Employer maintains policies or practices of compelling its non-exempt employees, including, without limitation, Employee, to work over four-hour periods (or major fractions thereof) without authorizing and permitting Employee and other aggrieved employees to take uninterrupted, timely, and complete ten-minute rest periods in which the employees are completely relieved of all of their duties, including, without limitation: by failing to provide rest periods all together; requiring that they be bundled together and/or with meal periods; interrupting them; not providing them in a timely fashion; and not permitting employees to leave the premises; and otherwise requiring on-duty/on-call rest periods. As such, Employee is informed and believes, and based thereon alleges, that Employee and other aggrieved employees are entitled to relief under, without limitation, Labor Code section 226.7. However, Employee is informed and believes that those premium payments under Labor Code section 226.7 were not made, either, for these non-compliant rest periods, either at all or at the proper regular rate of pay. Employer would thus be liable for civil penalties pursuant

to Labor Code sections 558 and 2699 for both failing to authorize the taking of compliant rest periods, as well as for failing to provide premium pay under Labor Code section 226.7.

5. Failure to Provide Accurate Wage Statements in violation of Labor Code §226

In addition to the above, Employee is informed and believes, and based thereon alleges that Employer failed and continue to fail to keep adequate or accurate time records including wage statements and similar payroll documents under Labor Code section 226, documents signed to obtain or hold employment under Labor Code section 432, personnel records under Labor Code section 1198.5, and time records under Labor Code section 1174, making it difficult for Employee and other aggrieved employees to calculate their unpaid wages and/or premium payments. Employer also failed to provide these documents to Employee and other aggrieved employees upon request. This would entitle Employee and other aggrieved employees to penalties prescribed by Labor Code sections 226 and 1198.5. Employer would also be liable for civil penalties pursuant to Labor Code sections 558, 1174.5 and 2699.

As a result of, among other things, Employer's herein-described policy or practice of failing to: accurately record time; failing to pay overtime and minimum wages; provide meal periods; provide rest periods; and provide compensation in lieu of meal or rest periods; as described above, Employee is informed and believes, and based thereon alleges, that Employer also intentionally failed and continues to fail to furnish aggrieved employees, including, without limitation, Employee, with itemized wage statements that accurately reflect: gross wages earned; total hours worked by the employee; net wages earned; all deductions; all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee; the legal name and address of the employer; and other such information as required by Labor Code section 226, subdivision (a). Specifically, Employer intentionally failed to furnish employees with itemized wage statements that accurately reflect the hours worked by Employee and other aggrieved employees and the rates of pay at which they were or should have been paid (including due to failure to pay at the proper regular rate), thus resulting in a failure to reflect gross and net wages earned and paid at each rate, as well. Consequently, since Employer would have failed to comply with Labor Code section 226, subdivision (a), Employee and other aggrieved employees would be entitled to recover penalties under, without limitation, Labor Code section 226, subdivision (e). Employer would also be liable for civil penalties pursuant to Labor Code sections 226.3, 558, and 2699.

6. Late Payment of Wages in Violation of Labor Code §§ 204

Employee is informed and believes, and based thereon alleges that Employer had and has a policy or practice of failing to pay aggrieved employees their wages in accordance with Labor Code Section 204, which requires that: "[l]abor 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." Employee is informed and believes and based thereon alleges that Employer did not and do not pay Employee and other aggrieved employees in accordance with Labor Code Section 204. As such, Employee is informed and believes, and based thereon alleges that Employer violated

Labor Code section 204. Employer would be liable for civil penalties pursuant to Labor Code sections 210, 558 and 2699.

7. Other Labor Code Violations

Pursuant to *Huff v. Securitas Security Services USA, Inc.*, 25 Cal. App. 5th 745, as an aggrieved employee, Employee intends to pursue penalties for all the Labor Code violations committed by Employer. In *Huff* the court found that PAGA allows an “aggrieved employee”, a person affected by at least one Labor Code violation committed by an employer, to pursue penalties for all the Labor Code violations committed by that employer. As such, in addition to the violations specifically alleged above, Employee intends to pursue any other Labor Code violations committed by Employer against employees if authorized to file a representative action on behalf of the State of California.

Conclusion

Employer has violated or has caused to be violated a number of California Labor Codes and provisions of the Wage Order. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), please advise within sixty-five (65) calendar days of the postmarked date of this notice whether the LWDA intends to investigate the violations alleged above. Our office understands that if we do not receive a response within sixty-five (65) calendar days of the postmark date of this PAGA Notice that the LWDA intends to investigate these allegations, Employee may immediately thereafter file a civil complaint against Employer to allege causes of action for civil penalties under the Private Attorney General Act for the herein-described alleged violations of the Labor Code. Thank you for your assistance and cooperation in this matter.

Very truly yours,

LAW OFFICES OF SCOTT WARMUTH



Rex Phillips