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SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT
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14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
15 **COUNTY OF SAN BERNARDINO**

16 NESTHOR DAMIAN CARRERA,
17 individually, and on behalf of all other
aggrieved employees,

18 Plaintiff,

19 v.

20 ANABI OIL CORPORATION dba REBEL
21 CONVENIENCE STORES, a California
corporation, TMSO, INC., a California
22 company, HOLLINS MANAGEMENT
GROUP, INC., a California company; and
23 DOES 1 through 50, inclusive,

24 Defendants.

CASE NO.: CIVSB2431089

**COMPLAINT FOR VIOLATION OF THE
CALIFORNIA LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT OF 2004
("PAGA")**

[California Labor Code § 2698 *et seq.*]

1 This is a representative action brought by NESTHOR DAMIAN CARRERA, individually
2 and on behalf of all other aggrieved employees ("Plaintiff"), relating to systemic violations of
3 California wage and hour laws by his employers ANABI OIL CORPORATION dba REBEL
4 CONVENIENCE STORES ("Defendant Anabi,") TMSO, INC. ("Defendant TMSO,") and
5 HOLLINS MANAGEMENT GROUP, INC. ("Defendant Hollins") (collectively as "Defendants.")
6 Plaintiff makes the following allegations on information and belief, except as to allegations
7 pertaining to Plaintiff individually, which are based on his personal knowledge.

8 INTRODUCTION

9 1. Defendants provides delivery and sales of gasoline services. Plaintiff worked at
10 Defendant Anabi's location doing business as Rebel Convenience Stores. Defendant TMSO is
11 prevalent throughout Plaintiff's records and had control over the policies and procedures of
12 Defendants. Defendant Hollins controlled Plaintiff's paystubs and are listed as the employer on his
13 paystubs.

14 2. As private, for-profit businesses, Defendants implemented common policies and
15 practices that have resulted in systemic violations of California's wage and hour laws. Defendants
16 have failed to implement adequate practices to protect the rights of their employees, particularly in
17 light of the nature of their businesses, which is to maximize profits.

18 3. Plaintiff began his work for Defendants on or about August 1, 2012, and his
19 employment was terminated on or about October 9, 2023, as a store manager.

20 4. Defendants attempt to maximize profits by, among other methods, understaffing the
21 work locations resulting in systematic meal and rest period violations. During Plaintiff's tenure with
22 Defendants, Plaintiff's rest breaks and meal periods were often interrupted or not taken at all due to
23 being short staffed and having to leave the gas station where he was assigned located in Rialto
24 Store, California ("Rialto Store") open for customers. Plaintiff was not provided proper lawful,
25 uninterrupted rest breaks and meal periods from Defendants. Plaintiff complained about unlawful
26 rest breaks and meal periods to the Defendants, but Defendants did not rectify the problem. Plaintiff
27 experienced frequently interrupted rest breaks and meal periods, as there was usually only one
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1 employee working during a shift. Although meal period premiums were sometimes paid for being
2 "on duty," interruptions to rest breaks and meal periods were not compensated. Further, Plaintiff's
3 meal periods were occasionally interrupted or missed entirely as he worked to complete the tasks
4 assigned to him and to assist the customers of the Rialto Store due to being often the only employee
5 on hand.

6 5. Plaintiff worked more than his usually assigned hours a day due to having to work
7 off-the-clock hours and for occasionally working through meal periods but was not fully
8 compensated as he was only paid for his regularly scheduled hours and not the extra hours worked.
9 Plaintiff received calls from employees or management at all hours, even when off duty and not
10 officially working, which entitled him to overtime pay. Additionally, Defendants' upper
11 management regularly demanded Plaintiff to complete tasks after he had already clocked out. This
12 situation was a common and recurring occurrence, resulting in an extra weekly work that was not
13 paid to Plaintiff. Plaintiff would begin work before his assigned hours as required by Defendants,
14 off the clock. This time was not paid for by Defendants and is owed as overtime. Further, Plaintiff
15 would clock out of work at his assigned hours as required by Defendants, but then continue to work
16 after being clocked out. This time was not paid for by Defendants and is owed as overtime.

17 6. Throughout 2022 and 2023, Plaintiff repeatedly raised concerns about the
18 malfunctioning AC/heater unit at the Rialto Store. As a result of the malfunctioning AC/heater unit
19 at Rialto Store, Plaintiff and employees of the same station were subjected to extreme temperatures
20 of 100+ degrees in the summer and 30- degrees in the winter. Due to the broken AC/heater unit,
21 Plaintiff was forced to purchase his own drinking water during the summer and heaters in the winter
22 for his comfort during extreme high temperatures as Defendants did not provide these for their
23 employees. Further, Plaintiff was forced to use his own personal cell phone for work- including
24 using it to take calls from management and employees even during off-the-clock hours, but and was
25 not reimbursed for these business expenses. Plaintiff regularly used his personal cell phone to keep
26 in contact with Employers' management and other employees as part of his duties, but Plaintiff was
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1 not reimbursed for this business expense. Plaintiff also complained about not receiving overtime for
2 this time.

3 7. Plaintiff is missing California COVID Supplemental Paid Sick Leave on his
4 paystubs throughout the year 2022 and January 1, 2021, to March 28, 2021. Plaintiff was not paid
5 for the California COVID Supplemental Paid Sick Leave that was missing by Defendants.

6 8. As a result of systematic policies and procedures, Defendants have violated
7 California's wage and hour laws promulgated in the California Labor Code and all applicable
8 Industrial Welfare Commission ("IWC") Wage Orders. Defendants require its non-exempt
9 employees, who are informed that the needs of the businesses take top priority, to work through meal
10 and rest breaks, and to take untimely meal periods. Plaintiff and the other aggrieved employees were
11 not allowed to take meal periods unless they worked six (6) hours or more. Moreover, Plaintiff and
12 other aggrieved employees are not always afforded full thirty (30) minute meal periods and are often
13 under pressure to return to work early since they are too busy to complete their assigned work during
14 scheduled shifts. As a result, Plaintiff and other aggrieved employees have been denied the ability to
15 take the meal and rest breaks that they were and are legally entitled to take.

16 9. Moreover, Defendants have uniformly failed to pay Plaintiff and other aggrieved
17 employees proper overtime wages due the fact that they improperly calculate the regular rate of pay,
18 and willfully turns a blind eye to off-the-clock work that Plaintiff and other non-exempt employees
19 perform as a direct consequence of Defendants' understaffing and imposition of an unreasonable
20 workload.

21 10. This case involves all non-exempt employees of Defendants who have worked for
22 Defendants in the State of California during the applicable limitations period ("Statute of Limitations
23 Period"). Hereinafter, these employees are referred to as "Aggrieved Employees."

24 11. Plaintiffs seek to recover penalties for the Labor and Workforce Development Agency
25 ("LWDA"), on behalf of themselves and all other similarly situated Aggrieved Employees under the
26 Private Attorneys General Act ("PAGA") as a result of Defendants' systematic violations of the law.

1 **JURISDICTION AND VENUE**

2 12. The Superior Court of the State of California has jurisdiction in this matter because
3 Plaintiff is a citizen and resident of the State of California, and Defendants are citizens and residents
4 of, and/or regularly conduct business in, the State of California.

5 13. Venue is proper in this judicial district and the County of San Bernardino, California
6 because Plaintiff resides in the County of San Bernardino and Defendants' violation of the
7 California Labor Code occurred in the County of San Bernardino and many of Defendants unlawful
8 actions and omissions, as set alleged herein, occurred in the County of San Bernardino.

9 14. Defendants employed Plaintiff and other aggrieved employees within the State of
10 California and the unlawful acts alleged herein have a direct effect on Plaintiff and other aggrieved
11 employees.

12 15. The State of California, County of San Bernardino, has jurisdiction in this matter
13 because the individual claims are under the seventy-five thousand dollar (\$75,000.00) individual
14 jurisdictional threshold and the five million dollar (\$5,000,000.00) aggregate jurisdictional threshold
15 for federal court diversity jurisdiction. Further, there is no federal question at issue as the issues
16 herein are based solely on the California Labor Code, Industrial Welfare Commission Wage Orders,
17 Code of Civil Procedure and Rules of Court. Thus, the State of California, San Bernardino County
18 Superior Court maintains the appropriate jurisdiction to hear this matter.

19 **THE PARTIES**

20 16. During the statute of limitations period, Plaintiff was employed by Defendants and
21 assigned to work in the County of San Bernardino in the state of California.

22 17. Plaintiff is informed and believes, and thereon alleges, that Defendant Anabi, and at
23 all times relevant hereto was, a company organized and existing under the laws of the State of
24 California and licensed to do business in the State of California during a portion of or all of the Statute
25 of Limitations period.

26 18. Plaintiff is informed and believes, and thereon alleges, that Defendant TMSO, and at
27 all times relevant hereto was, a company organized and existing under the laws of the State of
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1 California and licensed to do business in the State of California during a portion of or all of the Statute
2 of Limitations period.

3 19. Plaintiff is informed and believes, and thereon alleges, that Defendant Hollins, and at
4 all times relevant hereto was, a company organized and existing under the laws of the State of
5 California and licensed to do business in the State of California during a portion of or all of the Statute
6 of Limitations period.

7 20. The true names and capacities of DOES 1 through 50, inclusive, are unknown to
8 Plaintiff at this time, and Plaintiff therefore sues such defendants under fictitious names. Plaintiff is
9 informed and believes, and thereon alleges, that each defendant designated as a DOE is in some
10 manner highly responsible for the occurrences alleged herein, and that Plaintiff and other aggrieved
11 employees' injuries and damages, as alleged herein, were proximately caused by the conduct of such
12 DOE defendants. Plaintiff will seek leave of the Court to amend this Complaint to allege the true
13 names and capacities of such DOE defendants when ascertained.

14 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
15 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
16 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
17 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
18 employer and/or joint employer of Plaintiff and the other aggrieved employees.

19 22. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
20 acted in all respects as the agent, servant, partner, joint venture, integrated enterprise, employee,
21 proxy. Managing agent, and/or principal of the co-Defendants, and in performing the acts mentioned
22 below was acting, at least in part, within the course and scope of that authority as such agent, proxy,
23 servant, partner, joint venture, employee, managing agent, and/or principal with the permission and
24 consent of the above co-Defendants. Plaintiff also alleges that the acts of each Defendant are legally
25 attributable to the other Defendants.

26 23. Plaintiff is informed and believes, and based thereon alleges, that each of the
27 Defendants sued herein was, at all relevant times, the employer, owner, shareholder, principal, joint
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1 venture, alter-ego, employee, proxy, managing agent, and/or principal of the remaining Defendants,
2 and was acting, at least in part, within the course and scope of such employment and agency, with the
3 express and implied permission, consent and knowledge, approval and/or ratification of the other
4 Defendants. The above co-Defendants, managing agents, and supervisors, aided, abetted, condoned,
5 permitted, approved, authorized, and/or ratified the unlawful acts described herein.

6 24. As a direct and proximate result of the unlawful actions of Defendants, Plaintiff and
7 the other aggrieved employees have suffered and continue to suffer penalties in amounts as yet
8 unascertained but subject to proof at trial and within the jurisdiction of this Court.

9 **PAGA REPRESENTATIVE ACTION ALLEGATIONS**

10 25. Pursuant to the California Private Attorneys General Act of 2004 (“PAGA”),
11 California Labor Code §§ 2698-2699.5, Plaintiff brings this action on behalf of himself and all other
12 aggrieved employees, e.g., current and former non-exempt employees of Defendants who are
13 California citizens and performed work for Defendants in the State of California at any time within
14 the period beginning one (1) year prior to the filing of the Complaint in this action, or as otherwise
15 permitted under PAGA, and ending at the time this action settles or proceeds to final judgment
16 (“statute of limitations period”).

17 26. On June 28, 2024, Plaintiff gave written notice by certified mail pursuant to
18 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
19 (“LWDA”) and Defendants, of the specific provisions of the California Labor Code and IWC Wage
20 Order alleged to have been violated, including the facts and theories to support the alleged
21 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
22 than sixty-five (65) days from postmark date of her written notice before filing this action, Plaintiff
23 has complied with all of the requirements set forth in California Labor Code § 2699.3 to commence
24 a representative action under PAGA.

25 27. On July 30, 2024, Plaintiff gave amended written notice by certified mail pursuant to
26 California Labor Code § 2699.3, to the California Labor and Workforce Development Agency
27 (“LWDA”) and Defendants, of the specific provisions of the California Labor Code and IWC Wage
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1 Order alleged to have been violated, including the facts and theories to support the alleged
2 violations. Plaintiff has not received any response from the LWDA. As Plaintiff has waited more
3 than sixty-five (65) days from the June 28, 2024, postmark date of his written notice before filing
4 this action, Plaintiff has complied with all of the requirements set forth in California Labor Code §
5 2699.3 to commence a representative action under PAGA.

6 **FACTUAL ALLEGATIONS**

7 **Failure to Provide Required Meal Periods**

8 **[Cal. Lab. Code §§ 226.7, 512, 558; § 11 of the Applicable IWC Wage Order]**

9 28. During the statute of limitations period, as part of Defendants' illegal policies and
10 practices to minimize labor costs and maximize corporate profits, Defendants have required,
11 permitted or otherwise suffered Plaintiff and aggrieved employees to perform work during their meal
12 periods, to completely skip their meal periods, to take late and short meal periods, and Defendants
13 have otherwise failed to provide the required meal periods to Plaintiff and aggrieved employees as
14 required under California Labor Code §§ 226.7, 512, 558 and § 11 of the applicable IWC Order.

15 29. Defendants have implemented several practices that have caused Plaintiff and
16 aggrieved employees to systematically miss and otherwise take non-compliant meal periods.
17 Defendants systematically understaff their work locations such that its non-exempt employees are
18 given so much work to complete that they regularly miss or take non-compliant meal periods. As a
19 direct consequence of this understaffing, Plaintiff and aggrieved employees have so much work to
20 complete within their scheduled shifts that they are forced to skip their meal periods altogether, to
21 take them after working longer than five (5) hours, to perform work during their meal periods, or
22 return to work after taking less than a thirty (30) minute meal period. Defendants also did not
23 properly notify their non-exempt employees of their rights under California law to take timely,
24 uninterrupted meal periods (including the right to second meal periods during shifts of longer than
25 ten (10) hours), and thus, aggrieved employees like Plaintiff were left in the dark as to when or for
26 how long they could take their meal periods.

27 30. There are also frequently occasions when Plaintiff and aggrieved employees need to
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1 perform other duties immediately before the time during which they are legally entitled to take a
2 meal period. Pursuant to Defendants' policies, Plaintiff and aggrieved employees cannot simply
3 drop their job duties to take a meal period. Consequently, Plaintiff and aggrieved employees
4 regularly miss meal periods, take late meal periods, return early from meal periods, and even clock
5 out for meal periods but continue working.

6 31. Despite the foregoing, Defendants have implemented a policy and practice of actively
7 discouraging the issuance of meal period premium payments, and in the process, Defendants have
8 also violated California Labor Code §§ 226.7, § 11 of the applicable IWC Wage Order, and the
9 California Unfair Competition Law, California Business & Professions Code §§ 17200 *et. seq.*, by
10 failing to compensate Plaintiff and aggrieved employees who were not authorized and permitted to
11 take a complete, timely, uninterrupted meal period, one additional hour of compensation at the
12 proper regular rate of pay for each workday that such a meal period was not authorized or permitted.

13 **Failure to Provide Required Rest Breaks**

14 **[Cal. Lab. Code §§ 226.7, 512; § 12 of the Applicable IWC Wage Order]**

15 32. During the statute of limitations period, as part of Defendants' illegal policies and
16 practices to minimize labor costs and maximize corporate profits, Defendants have failed to
17 authorize and permit Plaintiff and other aggrieved employees to take rest breaks as required under
18 California Labor Code §§ 226.7 and 512, and § 12 of the applicable IWC Order.

19 33. The same common policies and practices that deprive Plaintiff and other aggrieved
20 employees from taking their meal periods, as alleged herein, similarly deprive them of their ability to
21 take their first and second and third rest breaks. As alleged herein, Defendants understaff their work
22 locations which creates so much work for Plaintiff and other aggrieved employees that they are
23 frequently unable to take rest breaks.

24 34. Defendants also violated California Labor Code § 226.7, § 12 of the applicable IWC
25 Order, and the California Unfair Competition Law, California Business & Professions Code §§
26 17200 *et. seq.*, by failing to pay Plaintiff and other aggrieved employees who were not provided with
27 a rest break, in accordance with the applicable wage order, one additional hour of compensation at
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1 the proper regular rate of pay for each workday that a rest break was not provided.

2 **Failure to Pay Overtime Wages**

3 **[Cal. Lab. Code §§ 510, 1194, 1198; § 3 of the Applicable IWC Wage Order]**

4 35. Pursuant to California Labor Code §§ 510, 1194, and § 3 of the applicable IWC
5 Order, Defendants are required to compensate Plaintiff and other aggrieved employees for all
6 overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours
7 worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight
8 (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of
9 twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the
10 seventh consecutive day of work in any workweek.

11 36. Plaintiff and other aggrieved employees are current and former non-exempt
12 employees entitled to the protections of California Labor Code §§ 510, 1194, and § 3 of the
13 applicable IWC Order. During the statute of limitations period, Defendants have failed to
14 compensate Plaintiff and other aggrieved employees for all overtime hours worked as required under
15 the foregoing provisions of the California Labor Code and IWC Wage Order by, among other
16 methods: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as
17 provided by California Labor Code §§ 510, 1194 and § 3 of the applicable IWC Order, requiring,
18 permitting or suffering Plaintiff and other aggrieved employees to work off-the-clock, and to work
19 through meal and rest breaks, but not compensating them for this time, improperly calculating the
20 regular rate of pay based on shift differential and other remuneration, illegally rounding hours to the
21 benefit of Defendants, and other methods to be discovered.

22 37. In a short-sighted attempt to maximize profits, Defendants understaff their work
23 locations and required the workplace to remain open for customers. Not only has this practice
24 resulted in widespread missed meal and rest breaks, but it has also caused Plaintiff and other
25 aggrieved employees to perform work while off-the-clock. Defendants have actual or constructive
26 knowledge of this off-the-clock work and subtly condones it. Plaintiff and other aggrieved
27 employees routinely perform their duties promptly during their meal periods, rest breaks, and while
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1 off the clock, as they must be pursuant to Defendants' requirements. Defendants know that Plaintiff
2 and other aggrieved employees perform this work off-the-clock work.

3 38. Defendants have knowingly and willfully refused to perform its obligations to
4 compensate Plaintiff and other aggrieved employees for all wages earned and all hours worked in
5 violation of California Labor Code §§ 510, 1194 and 1198 and § 3 of the applicable IWC Order.

6 **Failure to Pay Minimum Wages**

7 **[Cal. Lab. Code §§ 1194, 1197; § 4 of the IWC Wage Orders]**

8 39. Pursuant to California Labor Code §§ 1194, 1197, and § 4 of the applicable IWC Wage
9 Order, payment to an employee of less than the applicable minimum wage for all hours worked in a
10 payroll period is unlawful.

11 40. During the statute of limitations period, the hourly rates for Plaintiff and other
12 aggrieved employees were precisely at California minimum wage. Based on this common practice,
13 Defendant failed to pay Plaintiff and other aggrieved employees minimum wages for all hours worked
14 by requiring, permitting or suffering Plaintiff and other aggrieved employees to work off the clock,
15 such as requiring them to work through meal and rest breaks but not compensating them for this time,
16 failing to include this time in all hours worked, and other methods to be discovered.

17 41. Defendants' conduct described herein violates California Labor Code §§ 1194, 1197,
18 and § 4 of the applicable IWC Wage Order. As a proximate result of the aforementioned violations,
19 Plaintiff and other aggrieved employees have been damaged in an amount according to proof at trial.
20 Therefore, pursuant to California Labor Code §§ 200, 203, 226, 1194, 1197.1, and any other applicable
21 law, Plaintiff and other aggrieved employees are entitled to recover the unpaid balance of wages owed
22 to them by Defendants, plus interest, penalties, attorneys' fees, expenses, and costs of suit.

23 **Failure to Timely Pay Wages During Employment**

24 **[Cal. Lab. Code § 204]**

25 42. Pursuant to California Labor Code § 204, for all labor performed between the 1st and
26 15th days of any calendar month, Defendants are required to pay their nonexempt employees between
27 the 16th and 26th day of the month during which the labor was performed. California Labor Code §
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1 204 also provides that for all labor performed between the 16th and 26th days of any calendar month,
2 Defendants are required to pay their non-exempt employees between the 1st and 10th day of the
3 following calendar month. In addition, California Labor Code § 204 provides that all wages earned
4 for labor in excess of the normal work period shall be paid no later than the payday of the next regular
5 payroll period.

6 43. During the statute of limitations period, Defendants have knowingly and willfully
7 failed to timely pay Plaintiff and other aggrieved employees all the wages for labor performed by the
8 next regular payroll period as required by California Labor Code § 204, including but not limited to,
9 compensation for missed meal and rest breaks, proper overtime wages due to an unlawful calculation
10 of the regular rate of pay, and for work performed off-the-clock.

11 **Failure to Pay All Wages Due to Discharged and Quitting Employees**

12 **[Cal. Lab. Code §§ 201 - 203]**

13 44. Pursuant to California Labor Code § 201, 202 and 203, Defendants are required to
14 pay all earned and unpaid wages to an employee who is discharged. California Labor Code § 201
15 mandates that if an employer discharges an employee, the employee's wages accrued and unpaid at
16 the time of discharge are due and payable immediately.

17 45. Furthermore, pursuant to California Labor Code § 202, Defendants are required to
18 pay all accrued wages due to an employee no later than 72 hours after the employee quits his or her
19 employment, unless the employee provided 72 hours previous notice of his or her intention to quit,
20 in which case the employee is entitled to his or her wages at the time of quitting.

21 46. California Labor Code § 203 provides that if an employer willfully fails to pay, in
22 accordance with Labor Code §§ 201 and 202, any wages of an employee who is discharged or who
23 quits, the employer is liable for waiting time penalties in the form of continued compensation to the
24 employee at the same rate for up to 30 workdays.

25 47. During the statute of limitations period, Defendants have willfully failed to pay
26 accrued wages and other compensation to Plaintiff and other aggrieved employees in accordance
27 with California Labor Code §§ 201 and 202. Defendants do not have a sufficient policy to provide
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1 Plaintiff and other aggrieved employees with their final paychecks within the timeframes required
2 under California law. In addition, because Defendants have failed and continue to fail to properly
3 compensate Plaintiff and other aggrieved employees for all hours worked when due, overtime
4 wages, and compensation for non-compliant meal and rest breaks, Defendants have also willfully
5 failed and continue to fail to pay accrued wages and other compensation to Plaintiff and other
6 aggrieved employees in accordance with California Labor Code §§ 201 and 202.

7 **Failure to Furnish Accurate Itemized Wage Statements**

8 **[Cal. Lab. Code §§ 226(a); 248.2, 248.6, and § 7 of the Applicable IWC Wage Order]**

9 48. During the statute of limitations period, Defendants have routinely failed to provide
10 Plaintiff and other aggrieved employees with timely and accurate itemized wage statements.
11 Defendants' pay stubs violate California Labor Code § 226 on their face by, among other things, failing
12 to state the name and address of the legal entity that was Plaintiff's and aggrieved employees'
13 employers. Derivatively, Defendants were and are not providing Plaintiff and other aggrieved
14 employees with proper meal periods and rest breaks but intentionally fails to include in their wage
15 statements one (1) additional hour of compensation at their regular rates of pay for each non-compliant
16 meal periods or rest breaks, applicable rate of pay for sick leave, the regular rate of pay for sick leave,
17 fail to provide and set forth the available supplemental COVID-19 sick leave and the amounts taken
18 and available, and other California Labor Code violations yet to be discovered.

19 49. In order to conceal its wage theft, Defendants knowingly and intentionally failed to
20 provide Plaintiff and other aggrieved employees with timely and accurate itemized wage statements
21 in accordance with California Labor Code § 226(a) and § 7 of the applicable IWC Order.

22 50. Plaintiff and other aggrieved employees suffered injury as a result of Defendants'
23 failure to provide timely and accurate itemized wage statements prevented them from discovering the
24 scope and extent of Defendants' violations of California wage and hour laws, prevented them from
25 being able to determine the gross wages earned, the total hours worked, all deductions made, the net
26 wages earned, all applicable hourly rates in effect during each pay period and the corresponding
27 number of hours worked at each hourly rate, the accurate rate of pay, available supplemental Covid-
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1 19 sick leave and amount taken, and other violations yet to be discovered.

2 **Failure to Maintain Required Records**

3 **[Cal. Lab. Code §§ 226(a), 248.2, 248.6, 1174(d); § 7 of the Applicable IWC Wage Order]**

4 51. During the statute of limitations period, as part of Defendants' illegal payroll policies
5 and practices to deprive Plaintiff and other aggrieved employees of all wages earned and due,
6 Defendants knowingly and intentionally failed to maintain records as required under California
7 Labor Code §§ 226(a) and 1174(d) and § 7 of the applicable IWC Order, including but not limited to
8 the following records: total daily hours worked by each employee; applicable rates of pay; all
9 deductions; meal periods; time records showing when each employee begins and ends each work
10 period; and accurate itemized statements. Defendants had knowledge that they were not providing
11 their non-exempt employees with proper meal and rest periods, but knowingly failed to include in
12 the wage statements one (1) extra hour of compensation for each missed meal and rest period.
13 Defendants also illegally and inaccurately recorded the time in which Plaintiff and other aggrieved
14 employees worked. Defendants have also failed to maintain accurate, itemized wage statements,
15 failed maintained records relating to supplemental COVID-19 sick leave and the amounts taken as
16 alleged above, and other violations of the California Labor Code which have not been discovered.

17 **Failure to Indemnify Employees for Necessary Expenditures Incurred in Discharge of Duties**

18 **[Cal. Lab. Code § 2802]**

19 52. California Labor Code § 2802(a) requires an employer to indemnify an employee for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
21 or her duties, or of his or her obedience to the directions of the employer.

22 53. During the Statute of Limitations period, and in violation of California Labor Code §
23 2802, Defendant failed to indemnify Plaintiff and other aggrieved employees for all business expenses
24 and/or losses incurred in direct consequence of the discharge of their duties, including but not limited to,
25 expenses for drinking water, heaters, and the use of their personal cell phones. Plaintiff and other
26 aggrieved employees were required to use their personal cellular phones for work related purposes
27 without receiving reimbursement from Defendants.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

3 **[Cal. Lab. Code § 2698 *et seq.*]**

4 (On Behalf of Plaintiff against Defendant)

5 54. Plaintiff incorporates herein by specific reference, as though fully set forth, the
6 allegations in paragraphs 1 through 53.

7 55. Plaintiff is an “aggrieved employee” within the meaning of California Labor Code §
8 2699(c), and a proper representative to bring a civil action on behalf of herself and other current and
9 former non-exempt employees of Defendants pursuant to the procedures specified in California
10 Labor Code § 2699.3, because Plaintiff was employed by Defendants and one or more of the alleged
11 California Labor Code violations was committed against Plaintiff during the statute of limitations
12 period.

13 56. Plaintiff seeks to recover civil penalties through a representative action permitted by
14 PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal.4th 969. Thus,
15 class certification is not required.

16 57. A plaintiff has standing to represent all aggrieved employees for all of her asserted
17 violations of the California Labor Code under PAGA. See *Huff v. Securitas Security Services USA,*
18 *Inc.* (2018) 23 Cal.App.5th 745, 757 (“For PAGA standing a plaintiff need only have been employed
19 by the violator and affected by ‘one or more’ of the alleged violations. (Sec. 2699, subds. (a), (c)).
20 Here, Plaintiff was not provided with nor was COVID-19 supplemental sick leave listed on his wage
21 statement, in addition to the meal and rest period and other California Labor Code violations as
22 alleged herein.

23 58. Pursuant to California Labor Code §§ 2698-2699.5, Plaintiff seeks to recover civil
24 penalties from Defendants in a representative action for the violations set forth above, including but
25 not limited to violations of California Labor Code §§ 201, 202, 203, 226(a), 226.7, 248.2, 248.6,
26 510, 512, 1174(d), 1194, 1197, ad 1198.

27 59. Pursuant to California Labor Code § 2699(a), Plaintiff seeks to recover civil penalties
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1 for Defendants' violations of California Labor Code provisions for which a civil penalty is
2 specifically provided, including but not limited to, the following:

- 3 a. Pursuant to California Labor Code § 210, for violations of California Labor
4 Code § 204, Defendants are subject to a civil penalty in the amount of one
5 hundred dollars (\$100) for the initial violation for each failure to pay each
6 employee, and two hundred dollars (\$200) per employee for violations in
7 subsequent pay periods.
- 8 b. Pursuant to California Labor Code § 226.3, for violations of California Labor
9 Code § 226(a), Defendants are subject to a civil penalty in the amount of two
10 hundred and fifty dollars (\$250) per aggrieved employee for the initial pay
11 period where a violation occurs and one thousand dollars (\$1,000) per
12 aggrieved employee for violations in subsequent pay periods.
- 13 c. Pursuant to California Labor Code § 1174.5, for violations of California Labor
14 Code § 1174(d), Defendants are subject to a civil penalty of five hundred
15 dollars (\$500).
- 16 d. Pursuant to California Labor Code § 1197.1, an employers who pays or causes
17 to be paid to any employee a wage less than the minimum fixed by an order of
18 the commission, shall be subject to a civil penalty as follows: for any initial
19 violation that is intentionally committed, one hundred dollars (\$100) for each
20 underpaid employee for each pay period for which the employee is underpaid;
21 and for each subsequent violation of the same offense, two hundred fifty
22 dollars (\$250) for each underpaid employee for each pay period for which the
23 employee is underpaid regardless of whether the initial violation was
24 intentionally committed.

25 54. California Labor Code § 2699(f) provides that for all California Labor Code
26 violations for which a civil penalty is not specifically provided, the following civil penalties are
27 established: one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
28

1 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
2 subsequent violation.

3 55. Plaintiff seeks to recover such civil penalties under California Labor Code § 2699(f)
4 for Defendants' violations of California Labor Code provisions for which a civil penalty is not
5 specifically provided, including but not limited to, California Labor Code §§ 201, 202, 203, 226.7,
6 1194, 1197, and 1198.

7 56. Plaintiff additionally seeks reasonable attorneys' fees and costs pursuant to California
8 Labor Code § 2699(g)(1) and California Code of Civil Procedure § 1021.5.

9 **PRAYER FOR RELIEF**

10 WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays
11 for relief against Defendants, as follows:

- 12 1. For civil penalties according to proof;
- 13 2. For reasonable attorneys' fees and costs pursuant to California Labor Code § 2699(g),
14 California Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for
15 attorneys' fees and costs; and
- 16 3. For such further relief that the Court may deem just and proper.

17
18 Dated: October 14, 2024

THE LAW OFFICE OF SCOTT ERNEST WHEELER

19
20 By: /s/ Scott Ernest Wheeler
21 SCOTT ERNEST WHEELER, ESQ.

22 *GUZMÁN & TOKAR LLP*

23 *Marcia Guzman, Esq.*

24 *Attorneys for Plaintiff and the other Aggrieved*
25 *Employees*