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Attorneys for Plaintiff JAVIER BASSO DIAZ

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JAVIER BASSO DIAZ, individually, and on behalf of other members of the general public similarly situated;

Plaintiff,

v.

KEYVAL, INC., a California corporation; KEY TOY, LLC, a California limited liability company; A.H.K, Inc., a California corporation; KEY HOWARD, INCORPORATED, a California corporation; KEYES MOTORS, INC., a California corporation; 5905 AHK, LLC, a California limited liability company; KHMH, INC., a California corporation; KEYLEX, INC. a California corporation; HAK, INCORPORATED, a California corporation; MARIMART, INC., a California corporation; KEYES FAMILY MOTORS LLC, a California limited liability company; KEYES EUROPEAN, LLC, a California limited liability company; and DOES 1 through 10, inclusive,

Defendants.

Case No.: 24STCV22329

CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

1. Failure to Pay Minimum and Straight Time Wages (Lab. Code §§ 204, 1194, 1194.2, and 1197);
2. Failure to Pay Overtime Wages (Lab. Code §§ 1194 and 1198);
3. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512);
4. Failure to Authorize and Permit Rest Periods (Lab. Code §§ 226.7);
5. Failure to Timely Pay Final Wages at Termination (Lab. Code §§ 201-203);
6. Failure to Provide Accurate Itemized Wage Statements (Lab. Code § 226);
7. Unfair Business Practices (Cal. Bus. & Prof. Code §§ 17200, et seq.);
8. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 et seq.)

DEMAND FOR JURY TRIAL

Plaintiff JAVIER BASSO DIAZ ("Plaintiff"), based upon facts that either have evidentiary support or are likely to have evidentiary support after a reasonable opportunity for further investigation and discovery, individually and on behalf of all other members of the public similarly situated, alleges as follows:

THE PARTIES

1. Plaintiff is a California resident who worked for Defendants KEYVAL, INC., KEY TOY, LLC; A.H.K, Inc., KEY HOWARD, INCORPORATED, KEYES MOTORS, INC., 5905 AHK, LLC, KHMH, INC., KEYLEX, INC., HAK, INCORPORATED, MARIMART, INC., KEYES FAMILY MOTORS LLC, KEYES EUROPEAN, LLC, and DOES 1 through 10 (collectively, "Defendants") in California as a nonexempt employee paid hourly from approximately June 2023 to September 2023.

2. Plaintiff reserves the right to seek leave to amend this Complaint to add new Plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v. American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law, as well as to add additional claims.

3. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal.5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."].)

4. Plaintiff alleges, on information and belief, that Defendants are, and at all times herein mentioned, were:

(a) Business entities qualified to do business and actually conducting business in numerous counties throughout the State of California, including in Los Angeles County; and,

(b) The former employers of Plaintiff and the current and/or former employers of the Class Members/Aggrieved Employees because Defendants suffered and permitted Plaintiff and the Class/Aggrieved Employees to work, and/or controlled their wages, hours, or working conditions.

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5. At all times mentioned herein, Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff and a significant number of the Class Members/Aggrieved Employees in the State of California. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts, and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and of the Class/Aggrieved Employees. Further, Defendants are responsible for each of the unlawful acts or omissions complained of herein under the doctrine of "respondeat superior."

6. Plaintiff does not know the true names or capacities of the persons or entities sued herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names. Each of the Doe Defendants was in some manner legally responsible for the damages suffered by Plaintiff and the Class/Aggrieved Employees as alleged herein. Plaintiff will amend this Complaint to set forth the true names and capacities of these Defendants when they have been ascertained, together with appropriate charging allegations, as may be necessary. At all times mentioned herein, Does 1-10, inclusive, and each of them, were residents of, doing business in, availed themselves of the jurisdiction of, and/or injured Plaintiff and a significant number of the Class Members/Aggrieved Employees in the State of California.

7. Plaintiff alleges, on information and belief, that, at all relevant times, each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and the other employees described in the class definitions below, and exercised control over their wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer, director, controlling shareholder, subsidiary, affiliate, parent corporation, successor-in-interest and/or predecessor-in-interest of some or all of the other Defendants, and was engaged with some or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all of the other Defendants so as to be liable for their conduct with respect to the matters alleged below. Plaintiff alleges, on information and belief, that each Defendant acted pursuant to and within the scope of the relationships alleged above, that each Defendant knew or should have

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known about, and authorized, ratified, adopted, approved, controlled, aided and abetted the conduct of all other Defendants. Defendants are thus jointly and severally liable to Plaintiff and the Class/Aggrieved Employees Members/Aggrieved Employees on the claims asserted in this action.

8. Plaintiff alleges, on information and belief, that, at all relevant times, Defendants, and each of them, were joint employers of Plaintiff and of the Class/Aggrieved Employees Members/Aggrieved Employees because they exerted significant control over these employees and dictated essential terms and conditions of employment, including, but not limited to, setting employees' wages and paying them, sending employees to different Defendants' places of business to perform part of their job duties there, and to work some of their work hours at different Defendants' locations, as well as to use various equipment types at those Defendants' locations that other Defendants did not own but that were needed for employees to do their job. Defendants are thus jointly and severally liable to Plaintiff and the Class/Aggrieved Employees Members/Aggrieved Employees on the claims asserted in this action.

9. Plaintiff also alleges, on information and belief, that Defendants operated as an integrated enterprise and are thus jointly and severally liable to Plaintiff and the Class/Aggrieved Employees Members/Aggrieved Employees on the claims asserted in this action because they had (1) common ownership or financial control, (2) common management, (3) centralized control of labor relations, and/or (4) an interrelation of operations of Defendants.

10. Plaintiff is informed and believes, and, on that basis, alleges that those Defendants who are individuals ("Alter Ego Defendants") so dominated and controlled Defendants who were business entities (collectively, "Corporate Defendants") that failure to disregard the purported corporate entities, partnerships, companies, and/or organizations would sanction fraud and promote injustice.

11. Specifically, the Alter Ego Defendants:

(a) treated the assets of the Corporate Defendants, as if they were their own;

(b) diverted assets from the Corporate Defendants to themselves to the detriment of the creditors of the Corporate Defendants;

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(c) were original incorporators and/or officers and/or directors and/or partners and/or trustees and/or members and/or managing members of the Corporate Defendants;

(d) were and/or are shareholders and/or members and/or managing members and/or have had equitable ownership in and/or financial interest in the Corporate Defendants;

(e) used the Corporate Defendants as a mere instrumentality or "alter ego";

(f) have preferred themselves, or their personal creditors, or creditors with personal guarantees as creditors of the Corporate Defendants, to the detriment of Plaintiff and of the Class/Aggrieved Employees Members/Aggrieved Employees;

(g) actively participated in or consciously ratified the acts, conduct, and event that the Corporate Defendants contend gives rise herein to any defense.

12. Recognition of the separate existence of the Alter Ego Defendants would perpetrate a fraud and/or circumvent a statute and/or otherwise accomplish some wrongful or inequitable purpose. The facts are such that adherence to the fiction of the separate existence of the Alter Ego Defendants would, under the circumstances of this case, sanction a fraud or promote injustice or permit the Alter Ego Defendants to evade their liability;

13. Plaintiff is informed and believes, and, on that basis, alleges that the Corporate Defendants, and each of them, and at all times herein mentioned:

(a) were mere shells and shams without capital, assets, stock, or stockholders, and conduits, through which the Alter Ego Defendants carried on their business in the corporate name, exactly as before incorporation, exercising complete control and dominance of such business to such an extent that any individuality or separateness of the Corporate Defendants and the Alter Ego Defendants never existed;

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(b) were conceived, intended, and used by the Alter Ego Defendants to avoid individual liability and for the purpose of substituting a financially insolvent business entity in the place of Alter Ego Defendants;

(c) were so inadequately capitalized that, compared with the business to be done by them and the risks of loss attendant thereon, its capitalization was illusory or trifling;

(d) had no stock authorized to be issued or issued, nor has any permit for issuance of stock been applied for;

(e) were being used, and their assets being used, by Alter Ego Defendants, for their personal uses, causing assets of the Corporate Defendants to be transferred to Alter Ego Defendants without adequate consideration, and withdrawing funds from the Corporate Defendants' bank accounts for personal use; and/or

(f) were completely controlled, dominated, managed, and operated by the Alter Ego Defendants, who intermingled the Corporate Defendants' assets to suit the convenience the Alter Ego Defendants.

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<u>JURISDICTION AND VENUE</u>

14. This Court has jurisdiction over this matter because Plaintiff brings this Complaint for various violations of the Labor Code and California Industrial Welfare Commission ("IWC") orders, Defendants are business entities operating in California, and Plaintiff is a California resident.

15. This class/representative action is brought pursuant to California Code of Civil Procedure section 382. The monetary damages, penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, section 10. The statutes under which this action is brought do not specify any other basis for jurisdiction. Plaintiff's share of damages, penalties, and other relief sought in this action does not exceed $75,000.

16. This Court has jurisdiction over Defendants because Defendants are either citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this action because there is no complete diversity, and this case falls within the statutory exceptions to "minimal diversity" jurisdiction under the Class/representative action Fairness Act, 28 U.S.C. § 1332(d)(4). Upon information and belief, two-thirds or more of the Class Members/Aggrieved Employees and Defendants are citizens of California and/or (a) two-thirds of the Class Members/Aggrieved Employees and Defendants are citizens of California; (b) the alleged wage and hour violations occurred in California; (c) significant relief is being sought against Defendants, whose violations of California wage and hour laws form a significant basis for Plaintiff's claims; and (d) no other class/representative action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

17. Venue is proper in this judicial district because Defendants maintain offices, have agents, and/or transact business in the County of Los Angeles, California.

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ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

18. Plaintiff worked for Defendants in California as non-exempt employee paid hourly. Defendants typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff regularly worked more than eight hours in a workday and more than forty (40) hours in a workweek.

19. Plaintiff brings this action against Defendants for Labor Code violations and unfair business practices stemming from Defendants' failure to pay for all hours worked (minimum, straight time, and overtime wages), failure to provide meal periods, failure to authorize and permit rest periods, failure to timely pay final wages, and failure to furnish accurate wage statements. As discussed below, Plaintiff's experience working for Defendants was typical and illustrative of the class.

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20. Plaintiff brings these causes of action individually and as a class/representative action on behalf of certain current and former employees of Defendants (hereinafter collectively referred to as the "Class" or "Class Members/Aggrieved Employees," and defined more fully below). The Class consists of Plaintiff and all other persons who have been employed by any Defendant in California as an hourly-paid or non-exempt employee during the statute of limitations period applicable to the claims pleaded here.

21. Defendants own/owned and operate/operated an industry, business, and establishment within the State of California, including Los Angeles County. As such and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to the Labor Code, Wage Orders issued by the IWC, and the California Business & Professions Code.

22. Despite these requirements, throughout the statutory period, Defendants willfully failed to comply with the Labor Code and IWC Wage Orders with respect to Plaintiff and the Class/Aggrieved Employees and instead maintained a systematic, company-wide policy and practice of including, but not limited to, the following violations on a regular basis:

(a) Failing to pay employees for all hours worked, including all minimum, straight time, and overtime wages; for example, Defendants:

1) required employees to perform work off-the-clock, without compensation, such as work meetings before clocking in, monitoring for, and responding to work-related calls and text messages, and continuing work after clocking out to close any pending deals, however long it took; and/or

2) required them to continue working during unpaid meal periods; and/or

3) failed to pay for all hours worked and failed to pay some of this unpaid work at the overtime rate, as required; and/or

4) failed to maintain accurate records of the hours worked.

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(b) Failing to provide employees with timely and duty-free meal periods; for example, Defendants:

1) required employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work; and/or

2) failed to compensate employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work;

3) continued to assert control over employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods; and/or

4) denied employees permission to take a meal period and/or to leave premises for such meal period;

5) cut their meal breaks short if any customers needed attention; and/or

6) failed to maintain accurate records of all meal periods taken or missed.

(c) Failing to authorize and permit employees to take timely and duty-free rest periods; for example, Defendants:

1) required employees to work in excess of four consecutive hours a day without Defendants authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours); and/or

2) failed to compensate employees for rest periods that were not authorized or permitted; and/or

3) continued to assert control over employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods; and/or

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4) denied employees permission to take a rest period.

(d) Falsifying and/or altering time records to avoid paying for all hours worked, overtime rates, and meal and rest break penalties and punishing employees who tried to keep accurate time records of their hours worked and meal breaks but taking away their ability to earn commissions;

(e) Failing to provide employees with accurate, itemized wage statements containing all the information required by the Labor Code and IWC Wage Orders, such as correct legal entity address, itemized deductions, applicable hourly rates, all overtime hourly rates, and all gross and net wages earned (including correct hours worked, meal and rest periods penalties), among other things;

(f) Failing to indemnify employees for expenditures incurred in direct discharge of duties of employment, such as reimbursing employees for having to use their personal cell phones to discharge their job duties and requiring them to purchase office supplies and gifts for customers without reimbursement.

23. On information and belief, Defendants, and each of them, were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

24. As a result of these violations of Labor Code § 226(a), Plaintiff and the Class/Aggrieved Employees suffered injury because, among other things:

(a) the violations led them to believe that they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they were entitled;

(b) the violations led them to believe that they had been paid the minimum, straight time, overtime, meal period premium, and rest period premium wages, even though they had not been;

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(c) the violations led them to believe they were not entitled to be paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they were entitled;

(d) the violations led them to believe they had been paid minimum, straight time, overtime, meal period premium, and rest period premium wages at the correct California rate even though they had not been;

(e) the violations hindered them from determining the amounts of minimum, straight time, overtime, meal period premium, and rest period premium wages owed to them;

(f) in connection with their employment before and during this action, and in connection with prosecuting this action, the violations caused them to have to perform mathematical computations to determine the amounts of wages owed to them, computations they would not have to make if the wage statements contained the required accurate information;

(g) by understating the wages truly due to them, the violations caused them to lose entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and other governmental benefits;

(h) the wage statements inaccurately understated the wages, hours, and wage rates to which Plaintiff and the Class/Aggrieved Employees were entitled, and Plaintiff and the Class/Aggrieved Employees were paid less than the wages and wage rates to which they were entitled.

25. Thus, Plaintiff and the Class/Aggrieved Employees are owed the amounts provided for in Labor Code § 226(e) and injunctive relief under Labor Code § 226(h).

CLASS/REPRESENTATIVE ACTION ALLEGATIONS

26. Plaintiff brings certain claims individually, as well as on behalf of each and all other persons similarly situated, and thus, seeks class certification under California Code of Civil Procedure section 382.

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27. All claims alleged herein arise under California law for which Plaintiff seek relief authorized by California law.

28. The proposed Class consists of and is defined as:

> All persons who worked for any Defendant in California as an hourly-paid or non-exempt employee at any time during the period beginning four years and 178 days before the filing of the initial Complaint in this action and ending on the first day of trial in this matter.[1]

29. At all material times, Plaintiff was a member of the Class.

30. Plaintiff undertook this concerted activity to improve the wages and working conditions of all Class Members/Aggrieved Employees.

31. There is a well-defined community of interest in the litigation and the Class is readily ascertainable:

(a) Numerosity: The members of the Class (and each subclass, if any) are so numerous that joinder of all members would be unfeasible and impractical. The membership of the entire Class is unknown to Plaintiff at this time; however, the Class is estimated to be greater than forty (40) individuals and the identity of such membership is readily ascertainable by inspection of Defendants' records.

(b) Typicality: Plaintiff is qualified to, and will, fairly and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest, and Plaintiff's claims are typical of all Class Members/Aggrieved Employees' claims as demonstrated herein.

(c) Adequacy: Plaintiff is qualified to, and will, fairly, and adequately protect the interests of each Class Member with whom there is a shared, well-defined community of interest and typicality of claims, as demonstrated herein. Plaintiff has no conflicts with or interests antagonistic to any Class Member. Plaintiff's attorneys, the proposed class counsel, are versed in the

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[1] In response to the COVID-19 pandemic, the Judicial Council of California adopted Emergency Rule 9(a) (California Rules of Court), whereby "statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020 to October 1, 2020."

rules governing class/representative action discovery, certification, and settlement. Plaintiff has incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: A Class/representative action is superior to other available methods for the fair and efficient adjudication of the controversy, including consideration of:

1) The interests of the members of the Class in individually controlling the prosecution or defense of separate actions;

2) The extent and nature of any litigation concerning the controversy already commenced by or against members of the Class;

3) The desirability or undesirability of concentrating the litigation of the claims in the particular forum; and,

4) The difficulties likely to be encountered in the management of a class/representative action.

(e) Public Policy Considerations: The public policy of the State of California is to resolve the Labor Code claims of many employees through a class/representative action. Indeed, current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are also fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class/representative actions provide the Class Members/Aggrieved Employees who are not named in the complaint with a type of anonymity that allows for the vindication of their rights at the same time as their privacy is protected.

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32. There are common questions of law and fact as to the Class (and each subclass, if any) that predominate over questions affecting only individual members, including without limitation, whether, as alleged herein, Defendants have:

(a) Failed to pay Class Members/Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages, as well as on-call/standby pay;

(b) Failed to provide meal periods and pay meal period premium wages to Class Members/Aggrieved Employees;

(c) Failed to authorize and permit rest periods and pay rest period premium wages to Class Members/Aggrieved Employees;

(d) Failed to provide Class Members/Aggrieved Employees with timely final wages;

(e) Failed to provide Class Members/Aggrieved Employees with accurate wage statements;

(f) Failed to indemnify Class Members/Aggrieved Employees for expenditures;

(g) Violated California Business & Professions Code §§ 17200 *et. seq*. as a result of their illegal conduct as described above.

33. This Court should permit this action to be maintained as a class/representative action pursuant to California Code of Civil Procedure § 382 because:

(a) The questions of law and fact common to the Class predominate over any question affecting only individual members;

(b) A class/representative action is superior to any other available method for the fair and efficient adjudication of the claims of the members of the Class;

(c) The members of the Class are so numerous that it is impractical to bring all members of the class before the Court;

(d) Plaintiff, and the other members of the Class, will not be able to obtain effective and economic legal redress unless the action is maintained as a class/representative action;

(e) There is a community of interest in obtaining appropriate legal and equitable relief for the statutory violations, and in obtaining adequate compensation for the damages and injuries for which Defendants are responsible in an amount sufficient to adequately compensate the members of the Class for the injuries sustained;

(f) Without class certification, the prosecution of separate actions by individual members of the class would create a risk of:

1) Inconsistent or varying adjudications with respect to individual members of the Class which would establish incompatible standards of conduct for Defendants; and/or,

2) Adjudications with respect to the individual members which would, as a practical matter, be dispositive of the interests of other members not parties to the adjudications, or would substantially impair or impede their ability to protect their interests, including but not limited to the potential for exhausting the funds available from those parties who are, or may be, responsible Defendants; and,

(g) Defendants have acted or refused to act on grounds generally applicable to the Class, thereby making final injunctive relief appropriate with respect to the class as a whole.

34. Plaintiff contemplates the eventual issuance of notice to the proposed members of the Class that would set forth the subject and nature of the instant action. Defendants' own business records may be utilized for assistance in the preparation and issuance of the contemplated notices. To the extent that any further notices may be required, Plaintiff contemplates the use of additional techniques and forms commonly used in class/representative actions, such as published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

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FIRST CAUSE OF ACTION

(Against All Defendants for Failure to Pay Minimum and Straight Time Wages for All Hours Worked)

35. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

36. "Hours worked" is the time during which an employee is subject to the control of an employer and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

37. At all relevant times herein mentioned, Defendants knowingly failed to pay to Plaintiff and the Class/Aggrieved Employees compensation for all hours they worked. By their failure to pay compensation for each hour worked as alleged above, Defendants willfully violated the provisions of Labor Code § 1194, and any additional applicable Wage Orders that require such compensation to non-exempt employees.

38. Accordingly, Plaintiff and the Class/Aggrieved Employees are entitled to recover minimum and straight time wages for all non-overtime hours worked for Defendants.

39. By and through the conduct described above, Plaintiff and the Class/Aggrieved Employees have been deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

40. By virtue of the Defendants' unlawful failure to pay additional compensation to Plaintiff and the Class/Aggrieved Employees for their non-overtime hours worked without pay, Plaintiff and the Class/Aggrieved Employees suffered, and will continue to suffer, damages in amounts which are presently unknown to Plaintiff and the Class/Aggrieved Employees and which will be ascertained according to proof at trial.

41. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage compensation due Plaintiff and the Class/Aggrieved Employees.

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42. Pursuant to Labor Code § 1194.2, Plaintiff and the Class/Aggrieved Employees are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

43. Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class/Aggrieved Employees were entitled to be paid twice a month at rates required by law, including minimum and straight time wages. However, during all such times, Defendants systematically failed and refused to pay Plaintiff and the Class/Aggrieved Employees all such wages due and failed to pay those wages twice a month.

44. Plaintiff and the Class/Aggrieved Employees are also entitled to seek recovery of all unpaid minimum and straight time wages, interest, and reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 218.6, and 1194(a).

SECOND CAUSE OF ACTION

(Against All Defendants for Failure to Pay Overtime Wages)

45. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

46. Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

47. Labor Code §§ 1194 and 1198 provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

48. At all times relevant hereto, Plaintiff and the Class/Aggrieved Employees have worked more than eight hours in a workday and/or more than forty (40) hours in a workweek, as employees of Defendants.

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49. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class/Aggrieved Employees overtime compensation for the hours they have worked in excess of the maximum hours permissible by law as required by Labor Code §§ 510 and 1198.

50. By virtue of Defendants' unlawful failure to pay additional premium rate compensation to Plaintiff and the Class/Aggrieved Employees for their overtime hours worked, Plaintiff and the Class/Aggrieved Employees have suffered, and will continue to suffer, damages in amounts which are presently unknown to them but which exceed the jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

51. By failing to keep adequate time records required by Labor Code § 1174(d), Defendants have made it difficult to calculate the full extent of overtime compensation due to Plaintiff and the Class/Aggrieved Employees.

52. Plaintiff and the Class/Aggrieved Employees also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to Labor Code § 1194(a), as well as the assessment of any statutory penalties against Defendants, in a sum as provided by the Labor Code and/or other statutes.

53. Labor Code § 204 requires employers to provide employees with all wages due and payable twice a month. The Wage Orders also provide that every employer shall pay to each employee, on the established payday for the period involved, overtime wages for all overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class/Aggrieved Employees with all compensation due, in violation of Labor Code § 204.

THIRD CAUSE OF ACTION

(Against All Defendants for Failure to Provide Meal Periods)

54. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

55. Under California law, Defendants have an affirmative obligation to relieve Plaintiff and the Class/Aggrieved Employees of all duty in order to take their first daily meal periods no later than the start of Plaintiff's and the Class's sixth hour of work in a workday, and to take their second meal periods no later than the start of the eleventh hour of work in the workday. Labor

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Code § 512, and Section 11 of the applicable Wage Orders require that an employer provide unpaid meal periods of at least thirty (30) minutes for each five-hour period worked. It is a violation of Labor Code § 226.7 for an employer to require any employee to work during any meal period mandated under any Wage Order.

56. Despite these legal requirements, Defendants regularly failed to provide Plaintiff and the Class/Aggrieved Employees with both meal periods as required by California law. By their failure to permit and authorize Plaintiff and the Class/Aggrieved Employees to take all meal periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted meal periods), Defendants willfully violated the provisions of Labor Code § 226.7 and the applicable Wage Orders.

57. Under California law, Plaintiff and the Class/Aggrieved Employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s), plus interest thereon.

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FOURTH CAUSE OF ACTION

(Against All Defendants for Failure to Authorize and Permit Rest Periods)

58. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

59. Defendants are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Labor Code § 512, the applicable Wage Orders require that the employer permit and authorize all employees to take paid rest periods of ten minutes each for each 4-hour period worked. Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks, as required, is itself a violation of California's rest break laws. It is a violation of Labor Code § 226.7 for an employer to require any employee to work during any rest period mandated under any Wage Order.

60. Despite these legal requirements, Defendants failed to authorize Plaintiff and the Class/Aggrieved Employees to take rest breaks, regardless of whether employees worked more than four hours in a workday. By their failure to permit and authorize Plaintiff and the

Class/Aggrieved Employees to take rest periods as alleged above (or due to the fact that Defendants made it impossible or impracticable to take these uninterrupted rest periods), Defendants willfully violated the provisions of Labor Code § 226.7 and the applicable Wage Orders.

61. Under California law, Plaintiff and the Class/Aggrieved Employees are entitled to be paid one hour of premium wages rate for each workday they were not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against All Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

62. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

63. At all times herein set forth, Labor Code §§ 201 and 202 provide that, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

64. Within the applicable statute of limitations, the employment of many other members of the Class ended, i.e., was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members/Aggrieved Employees, without abatement, all wages required to be paid by Labor Code §§ 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

65. Defendants' failure to pay those Class Members/Aggrieved Employees who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of Labor Code §§ 201 and 202.

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66. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with §§ 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

67. The Class is entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

68. Pursuant to Labor Code §§ 218.5, 218.6 and 1194, the Class is also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SIXTH CAUSE OF ACTION

(Against All Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

69. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

70. At all material times set forth herein, Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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 the employee is paid on a piece-rate basis, (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 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.

71. In addition, Labor Code § 246(i) required employer to provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement

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described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. If an employer provides unlimited paid sick leave or unlimited paid time off to an employee, the employer may satisfy this section by indicating on the notice or the employee's itemized wage statement "unlimited."

72. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements compliant with these Labor Code sections. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class/Aggrieved Employees, the failure to list the true "total hours worked by the employee," and the failure to list the true net wages earned.

73. As a result of Defendants' violation of Labor Code §§ 226(a) and 246(i), Plaintiff and the Class/Aggrieved Employees have suffered injury and damage to their statutorily protected rights.

74. Specifically, Plaintiff and the members of the Class have been injured by Defendants' intentional violations of California §§ 226(a) and 246(i) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under Labor Code § 226(a).

75. Calculation of the true wage entitlement for Plaintiff and the Class/Aggrieved Employees is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class/Aggrieved Employees were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

76. Plaintiff and the Class/Aggrieved Employees are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code §§ 226(a) and 246(i), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

77. Plaintiff and the Class/Aggrieved Employees are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to Labor Code § 226(h).

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SEVENTH CAUSE OF ACTION

(Against All Defendants for Violations of California Business & Professions Code §§ 17200, et seq.)

78. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

79. Defendants, and each of them, are "persons" as defined under California Business & Professions Code § 17201.

80. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class Members/Aggrieved Employees, and to the general public. Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

81. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code §§ 17200, et seq.

82. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described above in the foregoing causes of action are unlawful and in violation of public policy; and are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business & Professions Code §§ 17200, et seq.

83. By and through their unfair, unlawful, and/or fraudulent business practices described herein, the Defendants, have obtained valuable property, money and services from Plaintiff, and all persons similarly situated, and has deprived Plaintiff, and all persons similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

84. Plaintiff and the Class/Aggrieved Employees Members/Aggrieved Employees suffered monetary injury as a direct result of Defendants' wrongful conduct.

85. Plaintiff, individually, and on behalf of members of the putative Class, is entitled to, and does, seek such relief as may be necessary to disgorge money and/or property which the

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Defendants have wrongfully acquired, or of which Plaintiff and the Class/Aggrieved Employees have been deprived, by means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the Class/Aggrieved Employees are not obligated to establish individual knowledge of the wrongful practices of Defendants in order to recover restitution.

86. Plaintiff, individually, and on behalf of members of the putative class, is further entitled to, and does, seek a declaration that the above-described business practices are unfair, unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in the future.

87. Plaintiff, individually, and on behalf of members of the putative class, has no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members/Aggrieved Employees suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, has suffered and will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

88. Plaintiff also alleges that, if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance, and other withholdings.

89. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff and putative Class Members/Aggrieved Employees are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years and 178 days prior to the filing of this Complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members/Aggrieved Employees; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

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EIGHTH CAUSE OF ACTION

(Against All Defendants for Civil Penalties Under the Private Attorneys General Act Labor Code §§ 2698 et seq. by Plaintiff on Behalf of the State and the Aggrieved Employees)

90. Plaintiff incorporates by reference and realleges, as if fully stated herein, the above paragraphs.

91. Plaintiff brings this cause of action as a proxy for the State of California on behalf of themselves and of the "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 et seq., defined as "any person who was employed by Defendants and personally suffered each of the violations alleged during the period prescribed under Section 340 of the Code of Civil Procedure."

92. Labor Code section 2699(f) provides for applicable civil penalties ranging between $50 and $200 for violations of the Labor Code except for those for which a civil penalty is specifically provided.

93. Any violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

94. On or about June 21, 2024, Plaintiff paid the requisite PAGA filing fee and provided the attached written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations. A true and correct copy of Plaintiff's written PAGA notice is attached hereto as **Exhibit A** and incorporated by reference as though fully set forth herein (the "PAGA Notice").

95. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA Notice from the LWDA or a written notice by certified mail from any Defendants providing a description of any actions taken to cure the alleged violations.

96. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to

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investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 et seq.

97. As set forth in the PAGA Notice attached as **Exhibit A** and incorporated into this Complaint, Defendants committed all of these violations of the Labor Code and of the IWC Orders recited in the PAGA Notice and are liable for all corresponding civil penalties.

98. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA Notice (including any amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(g).

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated only with respect to the class claims, prays for relief and judgment against Defendants, jointly and severally, as follows:

CLASS CERTIFICATION

1. That this action be certified as a class/representative action with respect to all of its causes of action;
2. That Plaintiff be appointed as the representative of the Class; and,
3. That counsel for Plaintiff be appointed as Class Counsel.

AS TO THE FIRST CAUSE OF ACTION

4. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum and straight time wages due;
5. For unpaid wages as may be appropriate;
6. For liquidated damages; and

AS TO THE SECOND CAUSE OF ACTION

7. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due;

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8. For unpaid wages at overtime wage rates as may be appropriate;

9. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE THIRD CAUSE OF ACTION

10. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

11. For unpaid meal period premium wages as may be appropriate;

12. For such other and further relief as the Court may deem equitable and appropriate.

AS TO THE FOURTH CAUSE OF ACTION

13. That the Court declare, adjudge, and decree that Defendants violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

14. For unpaid rest period premium wages as may be appropriate;

AS TO THE FIFTH CAUSE OF ACTION

15. That the Court declare, adjudge and decree that Defendants violated Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment;

16. For statutory wage penalties pursuant to Labor Code § 203 for former employees who have left Defendants' employ;

AS TO THE SIXTH CAUSE OF ACTION

17. That the Court declare, adjudge, and decree that Defendants violated the record keeping provisions of Labor Code § 226(a) and applicable IWC Wage Orders, and willfully failed to provide accurate itemized wage statements thereto;

18. For all actual damages, according to proof;

19. For statutory penalties pursuant to Labor Code § 226(e);

20. For injunctive relief to ensure compliance with this section, pursuant to Labor Code § 226(h); and

AS TO THE SEVENTH CAUSE OF ACTION

21. That the Court declare, adjudge, and decree that Defendants violated California Business & Professions Code §§ 17200, et seq. by the foregoing violations.

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22. For restitution of unpaid wages to Plaintiff and all Class Members/Aggrieved Employees and prejudgment interest from the day such amounts were due and payable;

23. For the appointment of a receiver to receive, manage and distribute all funds disgorged from Defendants and determined to have been wrongfully acquired by Defendants as a result of violations of California Business & Professions Code §§ 17200 et seq.;

24. For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code §§ 17200, et seq.

AS TO THE EIGHTH CAUSE OF ACTION

25. For civil penalties due to Plaintiff, other Aggrieved Employees, and the State of California according to proof pursuant to, among others, Labor Code §§ 558, § 2699, § 210, § 1197.1, § 226.3, § 256, § 203.

AS TO ALL CAUSES OF ACTION

26. For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due or as provided by law;

27. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5 and/or Labor Code § 1194(a) and/or Labor Code § 2699(g) or as otherwise provided by law as to all causes of action that allow recovery of attorney's fees;

28. For a trial by jury as to all causes of action triable by jury; and

29. For any additional relief that the Court deems just and proper.

Respectfully submitted,

Dated: August 30, 2024 **WILSHIRE LAW FIRM**

m. desario

By: ______________________________
Molly DeSario, Esq.
Uliana Kozeychuk, Esq.

Attorneys for Plaintiff

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EXHIBIT A

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June 21, 2024

LWDA
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612
(***Via Online Submission***)

Keyes Honda, Inc.
5355 Van Nuys Blvd.
Van Nuys, CA 91401
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6620 2800 26

Keyval, Inc. dba Honda Van Nuys
20539 Ventura Blvd.
Woodland Hills, CA 91364
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6620 2580 70

C T Corporation System
Agent for Service of Process for:
Keyval, Inc. dba Honda Van Nuys
330 N. Brand Blvd.., Suite 700
Glendale, CA 91203
(***Via Certified Mail, Return Receipt Requested***)
#9489 0090 0027 6620 2800 19

Re: ***Javier Andres Basso-Diaz v.*** Keyval, Inc. dba Honda Van Nuys
Notice of Labor Code Violations and PAGA Penalties

To Whom It May Concern:

Please be advised that my office has been retained by Javier Andres Basso-Diaz ("Plaintiff") to pursue a Labor Code Private Attorneys General Act ("PAGA") representative action (Cal. Lab. Code §§ 2699, *et seq.*) against Plaintiff's former employer, Keyval, Inc. dba Honda Van Nuys ("Defendant"). The purpose of this letter is to comply with PAGA and set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's Aggrieved Employees.

Plaintiff wishes to pursue this action as an aggrieved employee, on behalf of the State of California, as well as on behalf of all other persons who worked for Defendant in California as a non-exempt or hourly-paid employee at any time within the applicable statutory period (hereafter, the

"Aggrieved Employees").

Plaintiff and the Aggrieved Employees suffered the Labor Code violations described below.

Plaintiff's Employment with Defendant

Defendant owns/owned and operates/operated an industry, business, and establishment within the State of California. As such, and based upon all the facts and circumstances incident to Defendant's business in California, Defendant is subject to the California Labor Code, Wage Orders issued by the Industrial Welfare Commission ("IWC"), and the California Business & Professions Code.

Plaintiff worked for Defendant in California as an hourly-paid, non-exempt employee during the past year. During Plaintiff's employment for Defendant, Defendant paid Plaintiff an hourly wage and classified Plaintiff as non-exempt from overtime. Defendant typically scheduled Plaintiff to work at least five days in a workweek and at least eight hours per day, but Plaintiff regularly worked more than eight hours in a workday and/or more than forty (40) hours in a workweek.

Throughout Plaintiff's employment, Defendant: failed to pay for all hours worked (including minimum, straight time, and overtime wages); failed to provide Plaintiff with legally compliant meal periods (and pay corresponding meal period premium wages at the correct rate of pay); failed to authorize and permit Plaintiff to take rest periods; failed to include all non-discretionary remuneration when calculating overtime pay, sick pay, and meal and rest period premium pay; failed to timely pay all final wages to Plaintiff when Defendant terminated Plaintiff's employment; failed to furnish accurate wage statements to Plaintiff; and failed to indemnify Plaintiff for expenditures. As discussed below, Plaintiff's experience working for Defendant was typical and illustrative.

Defendant Failed to Pay for All Hours Worked, Including Minimum, Straight Time, and Overtime Wages

Under California law, an employer must pay for all hours worked by an employee. "Hours worked" is the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In addition, Labor Code § 510 provides that employees in California shall not be employed more than eight hours in any workday or forty (40) hours in a workweek unless they receive additional compensation beyond their regular wages in amounts specified by law.

Labor Code §§ 1194 and 1198 also provide that employees in California shall not be employed more than eight hours in any workday unless they receive additional compensation beyond their regular wages in amounts specified by law. Additionally, Labor Code § 1198 states that the employment of an employee for longer hours than those fixed by the IWC is unlawful.

Throughout the statutory period, Defendant maintained a policy and practice of not paying Plaintiff and the Aggrieved Employees for all hours worked, including minimum, straight time, and overtime wages. Defendant required Plaintiff and the Aggrieved Employees to work "off-the-clock", uncompensated, by, for example, requiring Plaintiff and the Aggrieved Employees to perform work prior to clocking in for the workday, during unpaid meal periods, and after clocking out for the workday. Some of this unpaid work should have been paid at the overtime rate. In failing to pay for all hours worked, Defendant also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

The failure to pay for all hours worked also includes a system of time rounding and/or synthetic timekeeping that resulted in unpaid compensation for time worked pre-shift, post-shift, and when meal periods were supposedly recorded. If proven to be implemented by Defendant, this system resulted, over a period of time, in failing to compensate Plaintiff and the Aggrieved Employees properly for all the time they have actually worked even though the realities of Defendant's operations are such that it is possible, practical, and feasible to count and pay for work time to the minute. Accordingly, this system frequently paid Plaintiff and the Aggrieved Employees less than all their work time. Some of this unpaid work also should have been paid at the overtime rate. In failing to pay for all hours worked, again Defendant may have also failed to maintain accurate records of the hours Plaintiff and the Aggrieved Employees worked.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210, 1197.1, and 2699(f)(2) for failing to pay for all hours worked, including minimum, straight time, and overtime wages.

Failure to Provide Meal Periods

Under California law, employers have an affirmative obligation to relieve employees of all duty in order to take their first 30-minute, duty-free meal periods no later than the start of sixth hour of work in a workday, and to allow employees to take their second 30-minute, duty-free meal period no later than the start of the eleventh hour of work in the workday. Further, employees are entitled to be paid one hour of additional wages for each workday they were not provided with all required meal period(s).

Despite these legal requirements, Defendant wrongfully failed to provide Plaintiff and the Aggrieved Employees with legally compliant meal periods. Defendant regularly, but not always, required Plaintiff and the Aggrieved Employees to work in excess of five consecutive hours a day without providing a 30-minute, uninterrupted, and duty-free meal period for every five hours of work, or without compensating Plaintiff and the Aggrieved Employees for meal periods that were not provided by the end of the fifth hour of work or tenth hour of work. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory meal periods, or by denying Plaintiff and the Aggrieved Employees permission to take a meal period. Defendant also never informed Plaintiff of the right to, nor permitted Plaintiff to take, a second meal period when Plaintiff worked at least ten hours in a workday. Accordingly, Defendant's policy and practice was not to provide meal periods to Plaintiff and the Aggrieved Employees in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not provided with all required meal period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for meal periods and that were not provided.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to provide meal periods and pay meal period premium wages.

Failure to Authorize and Permit Rest Periods

Employers are required by California law to authorize and permit breaks of ten uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than two hours). Thus, for example, if an employee's work time is six hours and ten minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so required is itself a violation of California's rest break laws.

Throughout the statutory period, Defendant has wrongfully failed to authorize and permit Plaintiff and the Aggrieved Employees to take legally compliant rest periods. Defendant regularly required Plaintiff and the Aggrieved Employees to work in excess of four consecutive hours a day without Defendant authorizing and permitting them to take a 10-minute, uninterrupted, duty-free rest period for every four hours of work (or major fraction of four hours), or without compensating Plaintiff and the Aggrieved Employees for rest periods that were not authorized or permitted. Instead, Defendant continued to assert control over Plaintiff and the Aggrieved Employees by requiring, pressuring, or encouraging them to perform work tasks which could not be completed without working in lieu of taking mandatory rest periods, or by denying Plaintiff and the Aggrieved Employees permission to take a rest period. Accordingly, Defendant's policy and practice was to not authorize and permit Plaintiff and the Aggrieved Employees to take rest periods in compliance with California law.

Plaintiff and the Aggrieved Employees are thus entitled to be paid one hour of additional wages for each workday he or she was not authorized and permitted to take all required rest period(s). Defendant, however, regularly failed to pay Plaintiff and the Aggrieved Employees the additional wages to which they were entitled for rest periods and that they were not authorized and permitted to take.

As a result, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2) for failing to authorize and permit rest periods and pay rest period premium wages.

Failure to Accurately Calculate Overtime Pay, Sick Pay, and Meal Period Premium Pay When Issuing Non-Discretionary Remuneration

Federal law defining and interpreting "regular rate" under the FLSA governs this case. (*Alonzo v. Maximus, Inc.* (C.D. Cal. 2011) 832 F.Supp.2d 1122, 1129.) This "construction is supported by California case law and the DLSE Manual, each of which looks to FLSA standards to interpret the 'regular rate of pay' under California law." (*Ibid.*) "Under the FLSA, the 'regular rate' of pay 'at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf of, the employee,' subject to certain enumerated exceptions." (*Id.* at pp. 1129-30, quoting 29 U.S.C. § 207(e)(3).) "The burden is on Defendant to establish that its bonus payments fall within one of the exceptions in § 207(e)." (*Ibid.*)

The Department of Labor has interpreted section 207 to permit an employer to exclude a "discretionary bonus," but not a "promised bonus" from the "regular rate" of pay:

> Bonuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee's continuing in employment until the time the payment is to be made and the like are in this category. They must be included in the regular rate of pay.

(29 C.F.R. § 778.211 (2011); *see also* DLSE Manual § 49.1.2.4(3), incorporating 29 C.F.R. § 778.211.)

Plaintiff and/or the Aggrieved Employees received various forms of bonuses/commissions/incentive payments during pay periods where overtime was worked, but Defendant failed to *accurately* factor in the non-discretionary remuneration into their regular rate of pay.

As outlined by the California Supreme Court in *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878, for purposes of paying sick pay and premiums, "the term 'regular rate of compensation' in section 226.7(c) has the same meaning as 'regular rate of pay' in section 510(a) and encompasses not only hourly wages but all nondiscretionary payments for work performed by the employee."

Defendant should have included all non-discretionary remuneration when calculating overtime pay, sick pay, and meal period premium pay. Because it didn't, Defendant is liable to Plaintiff and/or the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 210 and 2699(f)(2).

<u>Failure to Pay All Earned Wages Twice Per Month</u>

Based on its failure to pay Plaintiff and the Aggrieved Employees for all wages as discussed above, Defendant also violated Labor Code § 204.

Labor Code § 204 requires employers to pay employees all earned wages two times per month. Throughout the statute of limitations period applicable to this cause of action, employees were entitled to be paid twice a month at their regular rates, including all meal period premium wages owed, rest period premium wages owed, and wages owed for overtime hours worked. However, during all such times, Defendant systematically failed and refused to pay the employees all wages due, and failed to pay those wages twice a month, in that employees were not paid all wages for all meal periods not provided by Defendant, all wages for all rest periods not authorized and permitted by Defendant, and all wages for all hours worked. As a result, Defendant owes employees the legally required wages for unpaid wages, and Plaintiff and the Aggrieved Employees suffered damages in those amounts.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 210 for failing to pay all earned wages twice per month.

<u>Failure to Maintain Accurate Records of Hours Worked and Meal Periods</u>

Plaintiff seeks penalties under California Labor Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity, employing labor who willfully fails to maintain accurate and complete records required by California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable IWC Order § 7(A)(3), every employer shall keep time records showing when the employee begins and ends each work period. Meal periods and total hours worked daily shall also be recorded.

Defendant, however, failed to maintain accurate records of hours worked and all meal periods taken or missed by Plaintiff and the Aggrieved Employees.

Defendant's failure to provide and maintain records required by the California Labor Code and the applicable IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to know, understand and question the accuracy and frequency of meal periods, and the accuracy of their hours worked stated in Defendant's records. Therefore, Plaintiff and the Aggrieved Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an unjustified economic enrichment to Defendant. As a direct result, Plaintiff and the Aggrieved Employees have suffered and continue to suffer, substantial losses related to the use and enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking to compel Defendant to fully perform its obligation under state law, all to their respective damage in amounts according to proof at trial. As a result of Defendant's knowing failure to comply with the

California Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved Employees have also suffered an injury in that they were prevented from knowing, understanding, and disputing the wage payments paid to them.

<u>Failure to Timely Pay All Wages at Termination</u>

Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

Within the applicable statute of limitations, the employment of Plaintiff and many other Aggrieved Employees ended, i.e., was terminated by quitting or being discharged, and the employment of others will be terminated. However, during the relevant time period, Defendant failed, and continues to fail to pay Plaintiff and terminated Aggrieved Employees, without abatement, all wages required to be paid by Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendant's employment. These unpaid wages include wages for unpaid work time (including minimum, straight time, and overtime wages), missed meal period premium wages, and missed rest period premium wages.

Defendant's conduct violates Labor Code §§ 201 and 202. Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

Accordingly, Plaintiff and the Aggrieved Employees are entitled to recover from Defendant their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to thirty (30) days maximum pursuant to Labor Code § 203.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 2699(f)(2) for failing to timely pay all wages at termination.

<u>Failure to Furnish Accurate Itemized Wage Statements</u>

Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (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 the employee is paid on a piece-rate basis, (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 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. An employee is presumed to suffer an injury if this information is missing. (Lab. Code § 226(e)(2)(B)(iii).)

The statute further provides: "An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars ($50) for the initial pay period in which a violation occurs and one hundred dollars ($100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars ($4,000), and is entitled to an award of costs and reasonable attorney's fees." (Lab. Code § 226(e)(1).)

Throughout the statutory period, Defendant failed to furnish Plaintiff and the Aggrieved Employees with accurate, itemized wage statements showing all applicable hourly rates, and all gross and net wages earned (including correct hours worked, correct wages for meal periods that were not provided in accordance with California law, and correct wages for rest periods that were not authorized and permitted to take in accordance with California law). Whether unpaid premiums for missed meal periods must be reported as "wages earned" and credited as "hours worked" in wage statements has been a settled issue since at least 2022.

Because Defendant violated Labor Code § 226, Plaintiff and similarly Aggrieved Employees suffered injury and damage to their statutorily protected rights. Accordingly, Plaintiff and similarly Aggrieved Employees are entitled to recover from Defendant the greater of their actual damages caused by Defendant's failure to comply with Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars ($4,000) per employee.

Moreover, Defendant is liable to Plaintiff and the Aggrieved Employees for the civil penalties provided for in Labor Code § 226.3 for failing to furnish accurate itemized wage statements.

Failure to Indemnify for Necessary Expenditures

Labor Code § 2802(a) provides that employers shall indemnify his or her employees for all necessary business expenditures or losses that have been incurred by the employees in direct discharge of his or her duties. Throughout the statute of limitations period applicable to this cause of action, Defendant wrongfully required Plaintiff and/or the Aggrieved Employees to pay expenses that they incurred in direct discharge of their duties for Defendant. Plaintiff and/or the Aggrieved Employees paid out-of-pocket for necessary employment-related expenses (which is defined as including, without limitation, work attire, work equipment, personal protective equipment, use of personal cell phones, and/or use of personal vehicles). Plaintiff and/or the Aggrieved Employees incurred substantial expenses as a direct result of performing their job duties for Defendant, but Defendant failed to indemnify Plaintiff and/or the Aggrieved Employees for these employment-related expenses.

As a result, Defendant is liable to Plaintiff and/or the Aggrieved Employees for the civil penalties provided for in Labor Code §§ 2802 and 2699(f)(2) for failing to indemnify Plaintiff and/or the Aggrieved Employees for necessary business expenditures.

Action for Civil Penalties Under PAGA

In light of the above, Plaintiff alleges that Defendant violated the following provisions of the Labor Code with respect to the Aggrieved Employees:

1. Labor Code § 204, 510, 1194, 1197, and 1198 by failing to pay for all hours worked, including minimum wages, straight time wages, and overtime wages;
2. Labor Code § 226.7 and applicable Wage Orders by failing to provide meal periods;
3. Labor Code § 226.7 and applicable Wage Orders by failing to authorize and permit rest periods;
4. Labor Code §§ 226.7, 246, 510, and applicable Wage Orders by failing to include all non-discretionary remuneration when calculating overtime pay, sick pay, and meal period premium pay;
5. Labor Code § 204 by failing to pay all earned wages two times per month;
6. Labor Code § 1174.5 and applicable Wage Orders by failing to maintain accurate records of hours worked and meal periods taken or missed;
7. Labor Code §§ 201 to 203 by willfully failing to pay all wages owed at termination;
8. Labor Code § 226 by failing to provide accurate itemized wage statements; and
9. Labor Code § 2802 by failing to indemnify for necessary expenditures.

Therefore, on behalf of all Aggrieved Employees, Plaintiff seeks applicable penalties related to the violations alleged above pursuant to the PAGA. These include, but are not limited to, penalties under Labor Code §§ 210, 226.3, 1174.5, 1197.1, and 2699(f)(2).

Plaintiff has placed Defendant on notice by mailing a certified copy of this correspondence, as indicated on the first page. Thank you for your attention to this matter. If you have any questions, please do not hesitate to contact me.

Sincerely,

WILSHIRE LAW FIRM

Justin F. Marquez, Esq.