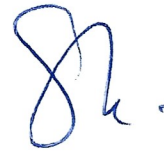


AUG 14 2024

INYO CO. SUPERIOR COURT
PAMELA M. FOSTER, CLERK
BY DEPUTY



Christina M. Lucio (SBN 253677)
christina@emplawllp.com
Mitchell J. Murray (SBN 285691)
mitchell@emplawllp.com
Nicholas W. Schieffelin (SBN 302329)
nick@emplawllp.com
EMPLAW, LLP
2235 Encinitas Boulevard, Suite 210
Encinitas, California 92024
Telephone: (760) 942-9433

Attorneys for Plaintiff PHILLIP POWELL, individually,
and in his representative capacity as private attorney general

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF INYO

PHILLIP POWELL, individually, and in
his representative capacity as private
attorney general,

Plaintiff,

v.

R & S BEVERAGE COMPANY LP, a
California limited partnership; and DOES 1
through 50, inclusive,

Defendants.

Case No.

24 UC 71165

COMPLAINT FOR DAMAGES FOR:

**Civil Penalties Under Private Attorneys'
General Act, Labor Code Section 2698 *et seq.***

DEMAND FOR JURY TRIAL

Plaintiff PHILLIP POWELL ("Plaintiff"), individually, and in his representative capacity as private attorney general, asserts claims against defendant R & S BEVERAGE COMPANY LP, a California limited partnership, and DOES 1 through 50, inclusive (collectively "Defendant") as follows:

INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys' General Act of 2004 ("PAGA"), Cal. Lab. Code section 2698 *et seq.* PAGA permits "aggrieved employees" to bring a lawsuit as a representative action on behalf of themselves and all other current and former aggrieved employees, to recover civil penalties and address an employer's violations of the California Labor Code.

2. Plaintiff brings this action pursuant to the PAGA on a representative basis on behalf of all

persons currently or formerly employed by Defendants, directly or indirectly, however titled, throughout the State of California and whose job duties did not consist of over 50% administrative, executive or professional duties. This encompasses : (1) all non-exempt employees working directly or indirectly for Defendant in the State of California from one year prior to the filing of the PAGA notice to the conclusion of this action and (2) all exempt employees working for Defendant in the State of California during the relevant time period who were misclassified as exempt. Together, the aggrieved non-exempt employees and the aggrieved misclassified exempt employees are referred to as the “Aggrieved Employees”.

3. Plaintiff brings this action on behalf of himself and the Aggrieved Employees to recover civil penalties and address Defendant’s violations of the California Labor Code and the IWC Wage Orders.

4. Pursuant to *Huff v. Securitas Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state and not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Powell has standing to pursue penalties on behalf of the state of violations affecting all the Aggrieved Employees working for Defendant, regardless of their classification, job title, or locations in California.

5. In this case, Defendant violated various provisions of the California Labor Code and IWC Wage Orders. Defendant’s violations include: (1) Failure to Pay Minimum Wages; (2) Failure to Pay Overtime Owed; (3) Failure To Provide Lawful Meal Periods; (4) Failure To Authorize And Permit Rest Periods; (5) Failure to Timely Pay Wages During Employment; (6) Failure to Timely Pay Wages Owed Upon Separation From Employment; (7) Failure to Reimburse Necessary Expenses; (8) Knowing and Intentional Failure to Comply with Itemized Wage Statement Provisions; (9) Failure to Keep Accurate Records; and (10) Failure to Accurately Pay Sick Leave.

6. This action is timely because Plaintiff suffered from a violation or numerous violations of the California Labor Code within one year of the date on which a PAGA notice was sent to the LWDA via online submission. More than 65 days have passed, and no response has been received by the LWDA. Plaintiff thereby satisfied the notice requirement under the statute and is permitted to proceed with this action in a representative capacity.

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 0
- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8

8. Further, there is no federal question at issue, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, the California Code of Civil Procedure, the California Civil Code, and the California Business and Professions Code.

PARTIES

11. Plaintiff and the members of the aggrieved group were employed, directly or indirectly, by Defendant as employees in the State of California from one year prior to the filing of the PAGA Notice to the conclusion of this action and their job duties did not consist of over 50% administrative, executive or professional duties (“Aggrieved Employees.”) As such, at all times the Aggrieved Employees should have been classified as non-exempt and were subject to the protections of the Labor Code and the Wage Order.

13. Whenever in this Complaint reference is made to any act, deed, or conduct of Defendant, the allegation means that Defendant engaged in the act, deed, or conduct by or through one or more of Defendant's officers, directors, agents, employees, or representatives, who was actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of Defendant.

1 14. The true names and capacities of Defendants, whether individual, corporate, associate, or
2 otherwise, sued herein as DOES 1 through 50, inclusive, are currently unknown to Plaintiff, who
3 therefore sue Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff will
4 seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants
5 designated hereinafter as DOES when such identities become known.

6 15. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the
7 partners, agents, or principals and co-conspirators of Defendants and of each other; that Defendants and
8 the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the
9 performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and
10 conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of the Defendants
11 as alleged herein.

12 16. Plaintiff is further informed and believes, and thereon alleges, that at all times material
13 herein, each Defendant was completely dominated and controlled by its co-Defendants and each was the
14 alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by
15 Defendant or Defendants, such allegations and references shall also be deemed to mean the conduct of
16 each of the Defendants, acting individually, jointly, and severally. Whenever and wherever reference is
17 made to individuals who are not named as Defendants in this complaint, but were employees and/or
18 agents of Defendants, such individuals, at all relevant times acted on behalf of Defendants named in this
19 complaint within the scope of their respective employments.

20 **FACTUAL ALLEGATIONS**

21 17. During the relevant time frame, the job duties of Plaintiff and the Aggrieved Employees
22 did not consist of over 50% administrative, executive or professional duties. In addition, Plaintiff and
23 the Aggrieved Employees who were misclassified did not meet the salary basis and did not regularly
24 exercise independent discretion. As such, Defendant was required to compensate Plaintiff and the
25 Aggrieved Employees on an hourly basis.

26 18. Plaintiff and the Aggrieved Employees were, and at all times pertinent hereto, have been
27 non-exempt employees within the meaning of the California Labor Code, and the implementing rules
28 and regulations of the IWC California Wage Orders. They are subject to the protections of the IWC
Wage Orders and the Labor Code.

1 19. During the relevant time, Plaintiff was employed as a Territory Manager from
2 approximately October 10, 2022 to September 19, 2023 and a non-exempt Driver from approximately
3 September 20, 2023 to October 3, 2023. Plaintiff provided distribution, warehouse, stocking,
4 transportation, and sales services at various R & S and product vendor locations in and around Bishop,
5 California. At all times, Plaintiff's primary job duties consisted of delivering product intrastate to retail
6 establishments and bars and restocking shelves and supplies. He also performed some sales functions at
7 various times.

8 20. Plaintiff typically worked five to seven days a week, averaging over 50 hours a week.

9 21. Plaintiff is informed and believes, and thereon alleges, that Defendant is and was advised
10 by skilled lawyers and other professionals, employees, and advisors with knowledge of the requirements
11 of California's wage and employment laws.

12 22. All Aggrieved Employees, including Plaintiff, are similarly situated in that they are all
13 subject to Defendant's uniform policies and systemic practices as specified herein.

14 23. Plaintiff and the Aggrieved Employees were not properly compensated for all hours
15 worked, in part because they were frequently required to work off the clock, including during purported
16 meal periods and for pre and post shift work, and were required to remain on-call.

17 24. In addition, the Aggrieved Employees frequently worked in excess of eight (8) hours a
18 day and/or over forty (40) hours in a work week, but were not properly paid for such time at a rate of
19 time and one-half the employee's regular rate of pay per hour. Plaintiff and the Aggrieved Employees
20 also often worked in excess of twelve (12) hours in one day and/or over eight (8) hours on the seventh
21 day of the workweek, but were not properly paid for such time at a rate of two times the employee's
22 regular rate of pay per hour.

23 25. Plaintiff and the Aggrieved Employees were paid incentives, bonuses, commissions, and
24 other forms of non-discretionary compensation which were not properly blended into the regular rate.
25 As a consequence, overtime, sick leave, and premiums were underpaid.

26 26. Plaintiff and the Aggrieved Employees were regularly required to work shifts in excess of
27 five hours without being provided a lawful meal period and over ten hours in a day without being
28 provided a second lawful meal period as required by law.

 27. Indeed, during the relevant time, as a consequence of Defendant's staffing and scheduling

1 practices, lack of coverage, work demands, and Defendant's policies and practices, Defendant frequently
2 failed to provide Plaintiff and the Aggrieved Employees timely, legally complaint uninterrupted 30-
3 minute meal periods on shifts over five hours as required by law.

4 28. On information and belief, Plaintiff and the Aggrieved Employees did not waive their
5 rights to meal periods under the law.

6 29. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty meal
7 periods.

8 30. Despite the above-mentioned meal period violations, Defendant failed to compensate
9 Plaintiff, and on information and belief, failed to compensate the Aggrieved Employees, one additional
10 hour of pay at their regular rate as required by California law when meal periods were not timely or
11 lawfully provided in a compliant manner.

12 31. Plaintiff is informed and believes, and thereon alleges, that Defendant knows, should
13 know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees were entitled
14 to receive premium wages based on their regular rate of pay under Labor Code §226.7 but were not
15 receiving such compensation.

16 32. In addition, during the relevant time frame, Plaintiff and the Aggrieved Employees were
17 systematically not authorized and permitted to take one net ten-minute paid, rest period for every four
18 hours worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.

19 33. Defendant maintained and enforced scheduling practices, policies, and imposed work
20 demands that frequently required Plaintiff and the Aggrieved Employees to forego their lawful, paid rest
21 periods of a net ten minutes for every four hours worked or major fraction thereof. Such requisite rest
22 periods were not timely authorized and permitted.

23 34. In addition, during purported meal and rest periods, Plaintiff and the Aggrieved
24 Employees were not relieved of all duty as required by law. By way of example, Plaintiff and the
25 Aggrieved Employees were required to remain on call, on duty, carry communications devices and/or
26 were required to remain with their work vehicles.

27 35. Moreover, Plaintiff and the Aggrieved Employees were required to incur necessary
28 expenses in the discharge of their duties, including without limitation uniform maintenance expenses,
cell phone expenses, and office supply expenses but were not reimbursed for such necessary expenses.

36. Despite the above-mentioned rest period violations, Defendant did not compensate Plaintiff, and on information and belief, did not pay the Aggrieved Employees one additional hour of pay at their regular rate as required by California law, including Labor Code section 226.7 and the applicable IWC wage order, for each day on which lawful rest periods were not authorized and permitted.

37. Plaintiff is informed and believes, and thereon alleges, that at all times herein mentioned, Defendant knew that at the time of termination of employment (or within 72 hours thereof for resignations without prior notice as the case may be) it had a duty to accurately compensate Plaintiff and the Aggrieved Employees for all wages owed including straight time, overtime, meal and rest period premiums, and that Defendant had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part because of the above-specified violations.

38. Defendant also failed to provide accurate, lawful itemized wage statements to Plaintiff and the Aggrieved Employees in part because of the above specified violations. In addition, upon information and belief, Defendant omitted an accurate itemization of total hours worked, the applicable hourly rates, the number of hours worked at each rate, the name and address of the legal entity that is the employer, gross pay and net pay figures from Plaintiff, and the Aggrieved Employees wage statements. Such actions were and continue to be in violation of the California Labor Code and applicable IWC Wage Orders.

39. Defendant has also made it difficult to determine applicable hourly rates of pay, total hours worked, and account with precision for the unlawfully withheld wages and deductions due to be paid to the Aggrieved Employees, including Plaintiff, during the liability period because they did not implement and preserve a lawful record-keeping method to record all hours worked, meal periods, and non-provided rest and meal periods owed to employees as required for non-exempt employees by 29 U.S.C. section 211(c), California Labor Code section 226, and applicable California Wage Orders.

40. Plaintiff and the Aggrieved Employees are covered by applicable California IWC Wage Orders and corresponding applicable provisions of the California Code of Regulations, Title 8, section 11000 *et seq.*

FAILURE TO PAY MINIMUM WAGES

41. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

1 42. Labor Code section 204 establishes the fundamental right of all employees in the State of
2 California to be paid wages, including minimum wage, straight time, in a timely fashion for their work.

3 43. Labor Code section 1194(a) provides that notwithstanding any agreement to work for a
4 lesser wage, any employee receiving less than the legal minimum wage compensation applicable to the
5 employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum
6 wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

7 44. Labor Code section 1197 provides: The minimum wage for employees fixed by the
8 commission or by any applicable state or local law, is the minimum wage to be paid to employees, and
9 the payment of a lower wage than the minimum so fixed is unlawful.

10 45. Pursuant to Labor Code section 1198, it is unlawful to employ persons for longer than the
11 hours set by the Industrial Welfare Commission or under conditions prohibited by the IWC Wage Orders.

12 46. The applicable Wage Orders and California Labor Code sections 1197 and 1182.12
13 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state
14 law.

15 47. Labor Code section 2698 provides that any violation of Labor Code sections 1194(a) and
16 1194.2(a) allows an employee who has not been paid the legal minimum wage as required by Labor Code
17 section 1197 to recover the civil penalties together with attorneys' fees and costs of suit.

18 48. During all relevant periods, the California Labor Code and Wage Orders required that
19 Defendant fully and timely pay its non-exempt, hourly employees all wages earned and due for all hours
20 worked.

21 49. The IWC Wage Orders define "hours worked" as "the time during which an employee is
22 subject to the control of an employer, and includes all the time the employee is suffered or permitted to
23 work, whether or not required to do so."

24 50. At all times relevant, Plaintiff and the Aggrieved Employees consistently worked hours
25 for which they were not paid because Defendant frequently required Plaintiff and the Aggrieved
26 Employees to work off the clock, including without limitation during purported meal periods and for pre
27 and post-shift work, as well as for on-call shifts.

28 51. Plaintiff is informed and believes that Defendant was aware that Plaintiff and the
Aggrieved Employees were working off the clock and that they should have been paid for this time.

52. Defendant's policy and practice of not paying all minimum wages violates California Labor Code sections 204, 210, 216, 558, 1182.12, 1194, 1197, 1197.1, 1198, and the applicable Wage Orders 1-2001, 4-2001, 7-2001 and 9-2001.

FAILURE TO PAY OVERTIME OWED

53. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs as if fully set forth herein.

54. During all relevant periods, Defendant required Plaintiff and the Aggrieved Employees to work shifts in excess of eight (8) hours per workday and/or to work in excess of forty (40) hours per workweek.

55. During all relevant periods, both the California Labor Code sections 1194, 1197, 510, 1198, and the pertinent Wage Order 16 required that all work performed by an employee in excess of eight (8) hours in any workday, on the seventh day of work in any workweek, or in excess of forty (40) hours in any workweek be compensated at one and one-half (1.5) times the employee's regular rate of pay. Any work in excess of twelve (12) hours in one (1) day is required to be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight (8) hours on any seventh (7th) day of a workweek is required to be compensated at the rate of no less than twice the regular rate of pay of an employee.

56. During all relevant periods, Defendant had a uniform policy of requiring Plaintiff and the Aggrieved Employees to work in excess of eight (8) hours in a workday and/or in excess of forty (40) hours in a workweek without compensating them at a rate of one and one-half (1.5) times their regular rate of pay. Upon information and belief, Defendant also failed to properly compensate Plaintiff and the Aggrieved Employees for hours worked in excess of twelve (12) hours in one (1) day, or eight (8) hours on the seventh (7th) day of a workweek.

57. The IWC Wage Orders define "hours worked" as "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."

58. At all times relevant, Plaintiff and Aggrieved Employees consistently worked hours for which they were not paid because Plaintiff and the Aggrieved Employees were required to work off the clock—some of these hours were over eight (8) hours in one (1) workday or in excess of forty (40) hours

1 in a workweek and should have been paid at the overtime rate.

2 59. Plaintiff is informed and believes that Defendant was aware that Plaintiff and the
3 Aggrieved Employees were working off the clock and that they should have been paid for this time.

4 60. In addition, upon information and belief, Defendant failed to incorporate all forms of
5 compensation, including without limitation bonuses, (shift) differentials, commissions, and incentives,
6 into the regular rate for overtime purposes.

7 61. As a result, Defendant failed to pay Plaintiff and the Aggrieved Employees earned
8 overtime wages and violated the law including 204, 210, 216, 510, 558, 1182.12, 1194, 1197, 1197.1,
9 1198, and the applicable Wage Orders 1-2001, 4-2001, 7-2001 and 9-2001..

10 62. Defendant knew or should have known Plaintiff and the Aggrieved Employees were
11 undercompensated as a result of these practices.

12 ***FAILURE TO PROVIDE LAWFUL MEAL PERIODS***

13 63. Plaintiff incorporates each and every allegation set forth in all of the foregoing paragraphs
14 as if fully set forth herein.

15 1. Pursuant to Labor Code § 512, no employer shall employ an employee for a work period
16 of more than five (5) hours without providing a meal break of not less than thirty (30) minutes in which
17 the employee is relieved of all of his or her duties, except that when a work period of not more than six
18 (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer
19 and employee. Similarly, pursuant to Labor Code § 512, no employer shall employ an employee for a
20 work period of more than ten (10) hours without providing a second meal break of not less than thirty
21 (30) minutes in which the employee is relieved of all of his or her duties. A second meal break may only
22 be waived by mutual consent, and if the employee did not waive his or her first meal period, and the
23 employee's work day will not exceed twelve hours.

24 64. During the relevant time, Defendant failed to provide Plaintiff and the Aggrieved
25 Employees timely and uninterrupted first meal periods of not less than thirty (30) minutes within the first
26 five hours of a shift.

27 65. Defendant also failed to provide Plaintiff and the Aggrieved Employees timely and
28 uninterrupted second meal periods of not less than thirty (30) minutes on shifts longer than ten hours.

66. Indeed, during the relevant time, as a consequence of Defendants' staffing and scheduling

practices, lack of coverage, work demands, and Defendants' policies and practices, Plaintiff and the Aggrieved Employees were not provided with legally required meal periods.

67. On information and belief, Plaintiff and the Aggrieved Employees did not waive their rights to meal periods under the law.

68. Plaintiff and the Aggrieved Employees were not relieved of all duty, were not allowed to leave the premises during meal periods, and/or were required to carry communications devices and remain on-call during purported meal periods.

69. Plaintiff and the Aggrieved Employees were not paid one hour of pay at their regular rate for each day that a first or second meal period was not lawfully provided.

70. As a proximate result of the aforementioned violations, Plaintiff and the Aggrieved Employees have been damaged in an amount according to proof at time of trial.

71. Pursuant to Labor Code § 226.7, Plaintiff and Aggrieved Employees are entitled to recover one (1) hour of premium pay at the regular rate for each day in which a meal period violation occurred. They are also entitled to recover reasonable attorneys' fees, cost, interest, and penalties as applicable.

72. As a result of the unlawful acts of Defendant, Defendant violated Labor Code section 512, 226.7, 1198, and the Wage Orders.

FAILURE TO AUTHORIZE AND PERMIT LAWFUL REST PERIODS

73. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein.

74. Pursuant to the IWC Wage Orders applicable to Plaintiff's and Aggrieved Employees' employment by Defendant, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period.... [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest period time shall be counted as hours worked, for which there shall be no deduction from wages."

75. Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any rest period mandated by an applicable order of the IWC.

76. Defendants were required to authorize and permit employees such as Plaintiff and the Aggrieved Employees to take rest periods during shifts in excess of 3.5 hours, based upon the total hours

1 worked at a rate of ten (10) minutes net rest per four (4) hours worked, or major fraction thereof, with no
2 deduction from wages.

3 77. Despite said requirements of the IWC wage orders applicable to Plaintiff's and the
4 Aggrieved Employees' employment with Defendant, Defendant failed and refused to authorize and
5 permit Plaintiff and the Aggrieved Employees to take lawful, net ten (10) minute rest periods for every
6 four (4) hours worked, or major fraction thereof.

7 78. Plaintiff and the Aggrieved Employees were not relieved of all duty, were not allowed to
8 leave the premises during rest periods, and/or were required to carry communications devices and remain
9 on-call during purported rest periods.

10 79. Defendant did not pay Plaintiff one additional hour of pay at his regular rate of pay for
11 each day that a rest period violation occurred. On information and belief, the Aggrieved Employees
12 endured similar violations as a result of Defendant's rest period policies and practices and Defendant did
13 not pay the Aggrieved Employees premium pay as required by law.

14 80. By their failure to authorize and permit Plaintiff and the Aggrieved Employees to take a
15 lawful, net ten (10) minute rest period free from work duties every four (4) hours or major fraction thereof
16 worked, including failure to provide two (2) total rest periods on six to ten hour shifts and three (3) total
17 ten (10) minute rest periods on days on which Plaintiff and the other Aggrieved Employees work(ed)
18 work a third rest period for shifts in excess of ten (10) hours, and by their failure to provide compensation
19 for such unprovided rest periods as alleged herein, Defendant willfully violated the provisions of Labor
20 Code sections 226.7 and the applicable IWC Wage Order(s).

21 81. As a result of the unlawful acts of Defendant, Plaintiff and the Aggrieved Employees he
22 seeks to represent have been deprived of premium wages in amounts to be determined at trial, and are
23 entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, under
24 Labor Code sections 218.6, 226.7, the applicable IWC Wage Orders, and Civil Code 3287

25 ***FAILURE TO TIMELY PAY WAGES DUE AND PAYABLE DURING EMPLOYMENT***

26 82. Plaintiff incorporates by reference and realleges each and every allegation contained
27 above, as though fully set forth herein.

28 83. Labor Code section 204 requires that all wages are due and payable twice in each calendar
month.

1 84. The wages required by Labor Code §§ 226.7, 510, 1194 and other sections became due
2 and payable to each employee in each month that he or she was not provided with a meal period or rest
3 period or paid minimum wage, straight or overtime wages to which he or she was entitled.

4 85. Defendant violated Labor Code § 204 by systematically refusing to pay wages due under
5 the Labor Code.

6 86. Labor Code section 210 (a) provides that “In addition to, and entirely independent and
7 apart from, any other penalty provided in this article, every person who fails to pay the wages of each
8 employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall
9 be subject to a penalty as follow:

- 10 1. For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
- 11 2. For each subsequent violation, or any willful or intentional violation, two hundred dollars
12 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
13 withheld.

14 87. Plaintiff and the Aggrieved Group are entitled to civil penalties, attorneys fees, and costs.

15 ***FAILURE TO TIMELY PAY WAGES OWED AT SEPARATION***

16 88. Plaintiff incorporates by reference and realleges each and every allegation contained
17 above, as though fully set forth herein.

18 89. Labor Code §§ 201 and 202 require Defendant to pay its employees all wages due within
19 seventy-two (72) hours of separation of employment.

20 90. Section 203 of the Labor Code provides that if an employer willfully fails to timely pay
21 such wages the employer must, as a penalty, continue to pay the subject employee’s wages until the back
22 wages are paid in full or an action is commenced. The penalty cannot exceed 30 days of wages.

23 91. Plaintiff and Aggrieved Employees are entitled to compensation for all forms of wages
24 earned, including but not limited to minimum wages, overtime, sick pay, and premium meal and rest
25 period compensation, but to date have not received such compensation, therefore entitling them to Labor
26 Code § 203 penalties.

27 92. In addition, irrespective of any derivative violation, Defendant failed to timely pay
28 Plaintiff and, upon information and belief, other Aggrieved Employees earned compensation at the time
of termination despite their obligations under Labor Code 201 and 202.

1 93. More than thirty (30) days have passed since affected Aggrieved Employees have left
2 Defendant's employ, and on information and belief, they have not received payment pursuant to Labor
3 Code § 203.

4 94. Plaintiff and the Aggrieved Employees are thus entitled to 30 days' wages as a penalty
5 under Labor Code § 203, together with interest thereon and attorneys' fees and costs.

6 ***FAILURE TO REIMBURSE NECESSARY EXPENSES***

7 95. Plaintiff repeats and incorporates herein by reference each and every allegation set forth
8 above, as though fully set forth herein.

9 96. Labor Code § 2802 requires Defendant to indemnify Plaintiff and Aggrieved Employees
10 for necessary expenditures incurred in direct consequence of the discharge of his or her duties.

11 97. Plaintiff and the members of the Indemnification group were required to incur expenses
12 in the performance of their assigned job duties. For example, Plaintiff and the Aggrieved Employees
13 were required to incur numerous out of pocket expenses, including without limitation, uniform
14 maintenance expenses, cell phone expenses, and office supply expenses, in direct consequence of the
15 discharge of their duties.

16 98. Upon information and belief, the Defendant did not reimburse Plaintiff or the Aggrieved
17 Group for such expenses.

18 99. As a result of the unlawful acts of Defendant, Defendant violated Labor Code §2800 and
19 2802.

20 ***KNOWING AND INTENTIONAL FAILURE TO COMPLY WITH ITEMIZED EMPLOYEE***

21 ***WAGE STATEMENT PROVISIONS***

22 100. Plaintiff repeats and incorporates herein by reference each and every allegation set forth
23 above, as though fully set forth herein.

24 101. Labor Code section 226(a) reads in pertinent part: "Every employer shall, semimonthly
25 or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part
26 of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by
27 personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2)
28 total hours worked by the employee... (4) all deductions... (5) net wages earned, (6) the inclusive dates
of the period for which the employee is paid, (7) the name of the employee and only the last four digits

1 of his or her social security number or an employee identification number other than a social security
2 number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly
3 rates in effect during each the pay period and the corresponding number of hours worked at each hourly
4 rate by the employee....”.

5 102. Further, the IWC Wage Orders require in pertinent part: Every employer shall keep
6 accurate information with respect to each employee including the following: (3) Time records showing
7 when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily
8 hours worked shall also be recorded...(5) Total hours worked in the payroll period and applicable rates
9 of pay....”

10 103. Labor Code section 1174 of the California also requires Defendant to maintain and
11 preserve, in a centralized location, among other items, records showing the names and addresses of all
12 employees employed and payroll records showing the hours worked daily by, and the wages paid to, its
13 employees. On information and belief and based thereon, Defendant has knowingly and intentionally
14 failed to comply with Labor Code section 1174, including by implementing the policies and procedures
15 and committing the violations alleged in the preceding causes of action and herein. Defendant’s failure
16 to comply with Labor Code section 1174 is unlawful pursuant to Labor Code section 1175.

17 104. Defendant has failed to record many of the items delineated in applicable Industrial Wage
18 Orders and Labor Code section 226, and required under Labor Code section 1174, including by virtue of
19 the fact that each wage statement which failed to accurately compensate Plaintiff and Aggrieved
20 Employees for all hours worked and for missed and non-provided meal and rest periods, or which failed
21 to include compensation for all minimum wages earned or overtime hours worked, was an inaccurate
22 wage statement. In addition, the wage statements inaccurately stated totals hours worked and hours
23 worked at each hourly wage rate.

24 105. On information and belief, Defendant failed to implement and preserve a lawful record-
25 keeping method to record all non-provided meal and rest periods owed to employees or all hours worked,
26 as required for Non-Exempt Employees under California Labor Code section 226 and applicable
27 California Wage Orders. In order to determine if they had been paid the correct amount and rate for all
28 hours worked, Plaintiff and Aggrieved Employees have been, would have been, and are compelled to try
to discover the required information missing from their wage statements and to perform complex

1 calculations in light of the inaccuracies and incompleteness of the wage statements Defendant provided
2 to them.

3 106. As a pattern and practice, in violation of Labor Code section 226(a) and the IWC Wage
4 Orders, Defendant did not and still do not furnish each of the members of the Aggrieved Group with an
5 accurate itemized statement in writing accurately reflecting all of the required information. Here,
6 Plaintiff asserts the Defendant omitted required information, failed to accurately include all applicable
7 hourly rates on the wage statements and the corresponding number of hours worked at such rates or hours
8 paid at such rates. In addition, Defendant has failed to provide accurate itemized wage statements as a
9 consequence of the above-specified violations for failure to accurately pay all wages owed, accurately
10 record all hours worked, and failure to pay meal and rest period premiums as required by law.

11 107. Moreover, upon information and belief, as a pattern and practice, in violation of Labor
12 Code section 226(a) and the IWC Wage Orders, Defendant did not and do not maintain accurate records
13 pertaining to the total hours worked for Defendant by the members of the Aggrieved Group, including
14 but not limited to, beginning and ending of each work period, meal period and split shift interval, the
15 total daily hours worked, and the total hours worked per pay period and applicable rates of pay.

16 ***FAILURE TO PAY SICK LEAVE AT THE PROPER RATE***

17 108. Plaintiff further alleges that Defendants failed to pay sick leave pay to Plaintiff and the
18 Aggrieved Employees at the proper rate.

19 109. Labor Code 246 (a) (1) provides: An employee who, on or after July 1, 2015, works in
20 California for the same employer for 30 or more days within a year from the commencement of
21 employment is entitled to paid sick days as specified. Labor Code section 246(l) provides: "For the
22 purposes of this section, an employer shall calculate paid sick leave using any of the following
23 calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the
24 regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the
25 employee actually works overtime in that workweek. (2) Paid sick time for nonexempt employees shall
26 be calculated by dividing the employee's total wages, not including overtime premium pay, by the
27 employee's total hours worked in the full pay periods of the prior 90 days of employment."

28 110. Plaintiff alleges that Defendant failed to pay Plaintiff and the Aggrieved Employees sick
leave at the proper rate because it failed to take all forms of compensation, including incentives, bonuses,

1 commissions, shift differentials, and other wages into account in calculating and paying the regular rate.
2 This constitutes a violation of Labor Code.

3 ***FAILURE TO KEEP ACCURATE PAYROLL AND TIMEKEEPING RECORDS***

4 111. The IWC wage orders, Labor Code sections 226(a), 1174, and 1174.5 require that the
5 Defendant keep accurate payroll and timekeeping information.

6 112. By virtue of the above-specified violations, including the failure to record hours worked
7 off the clock, wages earned, proper rates of pay and hours worked during purportedly provided meal
8 breaks, and the failure to timely pay wages according to requirements of Labor Code 204, Defendant
9 failed to keep accurate timekeeping and wage information and violated Labor Code sections 226(a),
10 1174, and 1174.5.

11 113. Defendant also failed to keep accurate payroll information as a consequence of the above
12 specified violations, including the failure to pay for all hours worked, premiums for missed meal and
13 rest breaks as required by law.

14 **CAUSES OF ACTION**

15 **FIRST CAUSE OF ACTION**

16 **PENALTIES UNDER THE PRIVATE ATTORNEYS' GENERAL ACT, LABOR CODE**

17 **SECTION 2698 ET SEQ.**

18 114. Plaintiff incorporates by reference each and every paragraph above, and realleges each
19 and every allegation contained above as though fully set forth herein.

20 115. Plaintiff gave timely written notice by online submission to the LWDA and by certified
21 mail to Defendant of Defendant's violations of numerous provisions of the California Labor Code and
22 the IWC Wage Orders as alleged in this complaint. All fees were paid as required by statute.

23 116. Plaintiff is an "aggrieved employee" as defined in Labor Code Section 2699(A), as he was
24 employed by Defendant during the statutory period and suffered one or more of the Labor Code violations
25 set forth herein. He seeks to recover for himself and all other current and former aggrieved employees
26 of Defendant the civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

27 117. 65 days have passed, and no response has been received from the LWDA. Accordingly,
28 the LWAD has permitted Plaintiff to proceed in a representative capacity.

118. Plaintiff has exhausted all administrative procedures required of them under the Labor

Code §§2698, 2699, 2699.3, and as a result, is justified as a matter of right in bringing forward this cause of action.

119. Pursuant to Labor Code section 2699(a) Plaintiff seeks to recover civil penalties for which Defendant is liable due to numerous Labor Code violations as set forth in this Complaint.

120. Plaintiff seeks to recover the PAGA civil penalties through a representative action permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Class certification of the PAGA claims is not required.

121. Pursuant to Labor Code section 2698 et seq. and 2699(a), Plaintiff seeks to recover civil penalties for which Defendant is liable due to numerous Labor Code and Wage Order violations as set forth in this Complaint.

122. Specifically, Plaintiff, on behalf of himself and the Aggrieved Employees, seeks penalties under Labor Code §2699, for, without limitation, the claims set forth herein, including:

- a. Defendant's failure to comply with the requirement of Labor Code §1182.12, 1194, 1197, 1198, and Wage Orders to pay at least minimum wage for every hour worked;
- b. Defendant's failure to comply with the requirement of Labor Code §510, 1194, 1197, 1198, and Wage Orders to accurately pay all wages earned, including overtime and reporting wages;
- c. Defendant's failure to comply with the requirement of Labor Code §216 to pay wages after demand was made;
- d. Defendant's failure to comply with the requirement of Labor Code §§204 and 210 to pay, without condition and within the time set by the applicable article, all wages, or parts thereof;
- e. Defendant's failure to comply with the requirement of Labor Code §225.5 to pay wages due;
- f. Defendant's failure to comply with the requirement of Labor Code §§201 and 202 to pay wages due to former employees;
- g. Defendant's failure to comply with the requirement of Labor Code §203 to pay waiting time penalties to former employees;
- h. Defendant's failure to comply with the requirement of Labor Code §226.7, 512, 1198,

and IWC Wage Orders to provide timely, uninterrupted 30 minute off-duty meal periods;

- i. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each lawful meal break that was not provided;
- j. Defendant's failure to comply with the requirement of Labor Code §226.7, 1198, and IWC Wage Orders to authorize and permit ten (10) minute rest breaks;
- k. Defendant's failure to comply with the requirement of Labor Code §§226.7, 1198, and IWC Wage Orders to pay one hour of premium pay at the regular rate for each statutorily required rest break that was not lawfully authorized and permitted;
- l. Defendant's failure to reimburse necessary expenses in violation of Labor Code § 2802;
- m. Defendant's failure to provide accurate compliant wage statements under Labor Code section 226;
- n. Defendants' failure to maintain required records in violation of Labor Code § 226, 1174, and IWC Wage Orders; and
- o. Defendants' failure to pay sick leave pay to Plaintiff and the Aggrieved Employees at the regular rate in violation of Labor Code section 246.

123. Plaintiff seeks civil penalties for Defendant's violation of Labor Code provisions for which a civil penalty is specifically provided, including but not limited to the following:

- a. Pursuant to Labor Code §210, for violations of Labor Code §204, Defendant is subject to a civil penalty in the amount of one hundred dollars (\$100) for the initial violation for each failure to pay each employee and two hundred (\$200) per employee for violations in subsequent pay periods plus 25% of the amount unlawfully withheld.
- b. Pursuant to Labor Code §226.3, for violations of Labor Code §226 (a) Defendant is subject to a civil penalty in the amount of two hundred and fifty dollars (\$250) per aggrieved employee for the initial pay period where a violation occurs and one thousand dollars (\$1,000) per aggrieved employee for violations in subsequent pay period.
- c. Pursuant to Labor Code §558(a), "[a]ny employer or other person acting on behalf of

an employer who violated, or causes to be violated, a section of this chapter or any provisions regulating hours and days of work in any order of the Industrial Welfare Commission,” including Labor Code §§510 and 512, shall be subject to a civil penalty, in addition to any other penalty provided by law, of fifty dollars (\$50) for initial violations for each underpaid employee for each pay period for which the employee was underpaid and one hundred dollars (\$100) for each subsequent violation for each underpaid employee for each pay period for which the employee was underpaid.

d. Pursuant to Labor Code §1174.5, for violations of Labor Code §1174(d), Defendant is subject to a civil penalty of five hundred dollars (\$500).

e. Pursuant to Labor Code §1197.1, an employer who pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission, shall be subject to a civil penalty as follows: for any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid; and for each subsequent violation of the same offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed.

124. Further, as a result of the acts alleged hereinabove, Plaintiff seeks penalties under Labor Code §§2698 et seq. and 2699 because of Defendant’s violation of numerous provisions of the California Labor Code and IWC Wage Orders.

125. Under Labor Code §2699, Plaintiff and Aggrieved Employees are entitled to \$100 for any initial violation and \$200 for all subsequent violations of the above-mentioned provisions of the California Labor Code.

126. Under Labor Code §2699, Plaintiff and Aggrieved Employees should be awarded twenty-five percent (25%) of all penalties due under California Law, interest, attorneys’ fees and costs.

127. Under Labor Code §2699, the State of California should we awarded seventy-five percent (75%) of the penalties due under California Law.

1 **PRAYER FOR RELIEF**

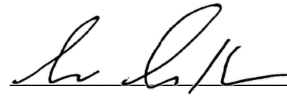
2 WHEREFORE, Plaintiff pray judgment against Defendant as follows:

- 3 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq. for the violations
4 specified above;
- 5 2. For penalties under Labor Code sections 210, 226.3, 1174.5, 1197.1, and 2699(a) and (f);
- 6 3. For interest at the legal rate pursuant to Labor Code §§ 218.6, 1194, 2802, California Civil
7 Code §§ 3287, 3288, and/or any other applicable provision providing for pre-judgment interest;
- 8 4. For reasonable attorneys' fees, expenses, and costs under Labor Code §§ 1194, 226, 2699,
9 and/or Code of Civil Procedure § 1021.5, and/or any other applicable provisions providing for attorneys'
10 fees and costs; and
- 11 5. For such other and further relief as the Court deems proper.

12 Respectfully submitted,

13
14 **EMPLAW, LLP**

15 Dated: August 12, 2024



16 Christina M. Lucio, Esq.

17 Mitchell J. Murray, Esq.

18 Nicholas W. Schieffelin, Esq.

19 Attorneys for Plaintiff PHILLIP POWELL, individually,
20 and in his representative capacity as private attorney
21 general
22
23
24
25
26
27
28