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on behalf of himself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**FOR THE COUNTY OF RIVERSIDE**

RALPH HERNANDEZ, on behalf of himself and  
current and former aggrieved employees

Plaintiff,

vs.

ABC PHONES OF NORTH CAROLINA, INC.;  
and DOES 1 to 100, inclusive,

Defendants.

Case No.: **CVP82405007**

**PAGA ACTION**

**PLAINTIFF RALPH HERNANDEZ'S  
COMPLAINT FOR:**

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

**COMES NOW** Plaintiff RALPH HERNANDEZ ("Plaintiff"), who alleges and complains  
against Defendants ABC PHONES OF NORTH CAROLINA, INC.; and DOES 1 to 100, inclusive  
(collectively "Defendants") as follows:

**I. INTRODUCTION**

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*  
("PAGA") representative action brought by Plaintiff on behalf of the State of California, himself  
and other current and former aggrieved employees of Defendants who worked as hourly non-exempt  
employees in California during the relevant time period seeking civil penalties associated with  
Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all hours  
worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to

1 authorize or permit all legally required and/or compliant meal periods or pay meal period premium  
2 wages; failure to authorize or permit all legally required and/or compliant rest periods or pay rest  
3 period premium wages; indemnification for all necessary expenditures or losses incurred by  
4 employees in direct consequence of discharging their duties; statutory penalties for failure to timely  
5 pay earned wages during employment; statutory penalties for failure to provide accurate wage  
6 statements; statutory waiting time penalties in the form of continuation wages for failure to timely  
7 pay employees all wages due upon separation of employment. Plaintiff seeks on a representative  
8 basis, following notice to the Labor and Workforce Development Agency, civil penalties, reasonable  
9 attorneys' fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,  
10 the State of California, and others aggrieved.

## 11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and  
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks  
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly  
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars  
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-  
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former  
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout  
19 California, including but not limited to Riverside County, at 72333 CA-11 Ste E, Palm Desert, CA  
20 92260.

## 21 **III. PARTIES**

22 1. Plaintiff brings this action as a representative of the Labor and Workforce  
23 Development Agency on behalf of himself and other current and former employees subject to  
24 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is  
25 filed include current, former and/or future employees of Defendants who work, worked, or will work  
26 for Defendants as direct employees as well as temporary employees employed through temp  
27 agencies as hourly non-exempt employees in California. At all times mentioned herein, the currently  
28 named Plaintiff is and was domiciled and a resident and citizen of California and was employed by

1 Defendants in an hourly position at Defendants' location in Riverside County from in or around  
2 June 16, 2023, until on or about May 16, 2024.

3 2. Plaintiff is informed and believes and thereon alleges that Defendant ABC PHONES  
4 OF NORTH CAROLINA, INC. is authorized to do business within the State of California and is  
5 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times  
6 relevant hereto were persons acting on behalf of Defendant ABC PHONES OF NORTH  
7 CAROLINA, INC. in the establishment of, or ratification of, the aforementioned illegal wage and  
8 hour practices or policies. Defendant ABC PHONES OF NORTH CAROLINA, INC. operates in  
9 Riverside County and employed Plaintiff and aggrieved employees in Riverside County, including  
10 but not limited to, at 72333 CA-11 Ste E, Palm Desert, CA 92260.

11 3. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1  
12 through 50 are corporations, or are other business entities or organizations of a nature unknown to  
13 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted  
14 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and working  
15 conditions of employment of Plaintiff and aggrieved employees.

16 4. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51  
17 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued  
18 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,  
19 supervisor, independent contractor and/or employee of each defendant who violated or caused to be  
20 violated the minimum wage and overtime provisions of the Labor Code and/or any provision of the  
21 Industrial Welfare Commission's wage orders regulating hours and days of work.

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

28 6. Plaintiff makes the allegations in this complaint without any admission that, as to

any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

**FIRST CAUSE OF ACTION**

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

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

7. Plaintiff incorporates all paragraphs above as though fully set forth herein.

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

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

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

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

12. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

1 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly  
2 non-exempt employees clock out for their meal breaks and continue to work off-the-clock.

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

9 14. **Failure to pay wages for overtime hours worked at the overtime rate of pay**  
10 **and/or failure to pay overtime wages at the proper rate of pay:** Defendants employed many of  
11 their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer  
12 is required to pay hourly employees for all "hours worked," which includes all time that an employee  
13 is under control of the employer and all time the employee is suffered and permitted to work. This  
14 includes the time an employee spends, either directly or indirectly, performing services that inure to  
15 the benefit of the employer.'

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

19 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40) hours  
20 in any one (1) workweek, and the first eight (8) hours worked on the seventh day of work in  
21 any one (1) workweek, shall be compensated at the rate of no less than one-and-one-half  
22 (1.5) times the regular rate of pay for an employee. Any work in excess of twelve (12) hours  
23 in one (1) day shall be compensated at the rate of no less than twice the regular rate of pay  
24 for an employee. In addition, any work in excess of eight (8) hours on any seventh day of a  
25 workweek shall be compensated at the rate of no less than twice the regular rate of pay of an  
26 employee.

27 Labor Code section 510.

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

(a) Requiring Plaintiff and other current and former aggrieved California-based hourly

1 non-exempt employees clock out for their meal breaks and continue to work off-the-clock.

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

6 18. In this case, Plaintiff alleges that when he and other current and former aggrieved  
7 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay  
8 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all  
9 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a  
10 policy, practice, and/or procedure of failing to include all remuneration such as commission, for  
11 example, when calculating Plaintiff's and other current and former aggrieved California-based  
12 hourly non-exempt employees' regular rate of pay for the purpose of paying overtime.

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

21 20. **Failure to pay wages to hourly non-exempt employees for workdays that**  
22 **Defendants failed to provide legally required and compliant meal periods and/or failure to**  
23 **pay period premium wages:** Plaintiff and other current and former aggrieved California-based  
24 hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and  
25 shifts of more than ten (10) hours in length.

26 21. California law requires an employer to authorize or permit an employee an  
27 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of  
28 all duties and the employer relinquishes control over the employee's activities prior to the

1 employee's sixth hour of work. Labor Code sections 226.7, 512, and 1198; Wage Order 4 at §11;  
2 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ  
3 an employee for a work period of more than ten (10) hours per day without providing the employee  
4 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh  
5 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period  
6 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal  
7 period is only permitted when: (1) the nature of the work prevents an employee from being relieved  
8 of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

17                 (a) failing to provide Plaintiff and other current and former aggrieved California-based  
18 hourly non-exempt employees timely, uninterrupted, duty-free meal breaks due to Plaintiff and other  
19 current and former aggrieved California-based hourly non-exempt employees being subjected to  
20 missed or late meal breaks and/or being required to remain on duty during their off-the-clock meal  
21 breaks.

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

27         25. Finally, on occasions when Defendants paid Plaintiff and other current and former  
28 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed, short,

1 on-premise, on-duty, and/or interrupted meal periods, Defendants failed to pay the one (1) additional  
2 hour of pay at Plaintiff's and other current and former aggrieved California-based hourly non-  
3 exempt employees' regular rate of compensation. Specifically, Defendants maintained a policy,  
4 practice, and/or procedure of failing to include all remuneration such as commission, for example,  
5 when calculating Plaintiff's and other current and former aggrieved California-based hourly non-  
6 exempt employees' regular rate of pay for the purpose of paying meal period premium wages.

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

11 27. **Failure to pay wages to hourly non-exempt employees for workdays that**  
12 **Defendants failed to provide legally required and compliant rest periods and/or failure to pay**  
13 **rest period premium:** Plaintiff and other current and former aggrieved California-based hourly  
14 non-exempt employees regularly worked shifts of more than three-and-a-half (3.5) hours.

15 28. California law requires every employer to authorize and permit an employee a rest  
16 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code  
17 section 226.7; Wage Order 4 at §12. Under California law, "[e]mployees are entitled to 10 minutes'  
18 rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six  
19 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*  
20 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7;  
21 Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period.  
22 Wage Order 4 at §12. Additionally, the rest period requirement "obligates employers to permit –  
23 and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*,  
24 (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all  
25 duties and relinquish control over how employees spend their time. *Id.*

26 29. If the employer fails to authorize or permit a required rest period, the employer must  
27 pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday the  
28 employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage

1 Order 4 at § 12.

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

6 (a) Failing to provide Plaintiff and other current and former aggrieved California-based  
7 hourly non-exempt employees with net ten (10) minute rest breaks for every four (4) hours worked  
8 or major fraction thereof.

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

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

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

26 34. **Failure to Indemnify for Losses and Expenditures Incurred as Part of**  
27 **Employment:** California law requires that every employer must indemnify its employees for all  
28 necessary expenditures or losses incurred by the employee in discharge of his or her duties or at the

1 obedience of the directions of the employer. Moreover, an employer is prohibited from passing the  
2 ordinary business expenses and losses of the employer onto the employee. (Lab. Code, § 2802.)

3 35. Defendants have violated Labor Code Section 2802 by failing to indemnify Plaintiff  
4 and other current and former aggrieved California-based non-exempt hourly employees' necessary  
5 expenditures they incurred in the discharge of their duties. Specifically, Defendants employed  
6 policies, practices, and/or procedures included, but not limited to:

7 (a) requiring Plaintiff and other current and former aggrieved California-based non-  
8 exempt hourly employees to use or purchase their own tools and/or resources in order to work for  
9 Defendants, including but not limited to their personal cell phone (including both telephone use  
10 and cellular data use) for work-related purposes – to help customers in store; use service called  
11 ClickToCall, which Plaintiff and other current and former aggrieved California-based non-exempt  
12 hourly employees would use to help customers resolve issues relating to issues with payments,  
13 their devices, and bills, without reimbursing Plaintiff and other current and former aggrieved  
14 California-based non-exempt hourly employees for such use.

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

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

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

1 calendar days following the close of the payroll period in which wages were earned. Labor Code  
2 section 204(d).

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

10 40. **Secret payment of lower wages than designated by statute:** Labor Code section  
11 223 provides that, where any statute or contract requires an employer to maintain the designated  
12 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage  
13 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including by  
14 failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and lawful  
15 sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7, 246,  
16 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by Labor  
17 Code section 1198, the Defendant secretly paid a lower wage than designated by statute while  
18 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

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

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

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

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

14 44. Defendants committed direct violations of Labor Code section 203, through their  
15 policies, practices, and/or procedures, including, but not limited to failing to pay Plaintiff and other  
16 current and former aggrieved California-based hourly non-exempt employees’ final commission  
17 upon their separation from Defendant.

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

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

27 47. Plaintiff has complied with the procedures for bringing suit specified in Labor Code  
28 section 2699.3. On June 14, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and

1 provided notice to Defendants by certified mail which provided notice of the specific provisions of  
2 the Labor Code alleged to have been violated, including the facts and theories to support the  
3 violations alleged.

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

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

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

18 b. For violations of Labor Code section 226(a), alternatively, two hundred fifty  
19 dollars (\$250) for each employee for each pay period for the initial violation, and for each  
20 subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period  
21 [penalty amounts established by Labor Code section 226.3].

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

26 d. For violations of Labor Code section 204, one hundred dollars (\$100) for  
27 each failure to pay each employee in any initial violation, and for each subsequent violation, or any  
28 willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee,

1 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code  
2 section 210].

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

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

10 **PRAYER FOR RELIEF**

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

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

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

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

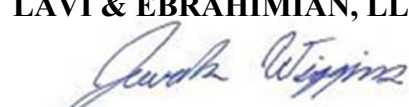
19 3. For attorneys' fees and costs of suit, including but not limited to those recoverable  
20 under California Labor Code section 2699(g); and

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

23  
24 Dated: August 12, 2024

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

25  
26 By:

  
\_\_\_\_\_  
Joseph Lavi, Esq.  
Vincent C. Granberry, Esq.  
Jovahn Wiggins, Esq.  
Attorneys for Plaintiff  
RALPH HERNANDEZ,

on behalf of himself and current and former  
aggrieved employees

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