

ELECTRONICALLY FILED
Superior Court of California,
County of Alameda
09/04/2024 at 11:58:35 AM
By: Milagros Cortez,
Deputy Clerk

David Mara, Esq., (SBN 230498)
Matthew Crawford, Esq. (SBN 310230)
MARA LAW FIRM, PC
2650 Camino del Rio North, Suite 302
San Diego, CA 92108
Telephone: 619.234.2833
Facsimile: 619.234.4048

Attorneys for Plaintiff CASSANOVA TIGER, on
behalf of himself and all others similarly situated
and on behalf of the general public

SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF ALAMEDA

CASSANOVA TIGER, on behalf of
himself and all others similarly situated, and
on behalf of the general public,

Plaintiff,

v.

GRAVES 6 INC. dba PREFERRED
PLUMBING & DRAIN; and DOES 1-100,

Defendants.

Case No. **24CV090091**

**PLAINTIFF CASSANOVA TIGER'S PAGA
COMPLAINT**

1. Violation of the Private Attorney General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages for All Work Performed (Cal. Lab. Code § 2698, et. seq.)
2. Violation of the PAGA for Failure to Pay All Overtime Wages (Cal. Lab. Code § 2698, et. seq.)
3. Violation of PAGA for Failure to Provide Meal Periods (Cal. Lab. Code § 2698, et. seq.)
4. Violation of PAGA for Failure to Provide Rest Periods (Cal. Lab. Code § 2698, et. seq.)
5. Violation of PAGA for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code § 2698, et. seq.)
6. Violation of PAGA for Knowing and Intentional Failure to Comply with Itemized Employee Wage Statements (Cal. Lab. Code § 2698, et. seq.)
7. Violation of PAGA for Failure to Reimburse Business Expenses Incurred in Discharging Duties (Cal. Lab. Code § 2698, et. seq.)
8. Violation of PAGA for Failure to Adopt a Compliant Sick Pay/Paid Time Off Policy (Cal. Lab. Code § 2698, et. seq.)
9. Violation of PAGA for Failure to Pay Employees Two Times Per Month (Cal. Lab. Code § 2698, et. seq.)

DEMAND FOR JURY TRIAL

1 Plaintiff CASSANOVA TIGER (hereinafter "Plaintiff"), on behalf himself and all other
2 similarly aggrieved employees (hereinafter "aggrieved employees"), files this Complaint against
3 Defendant GRAVES 6 INC. dba PREFERRED PLUMBING & DRAIN (hereinafter "Defendant")
4 and/or DOES 1-100.

5 **I. INTRODUCTION**

6 1. This is a representative action seeking recovery of penalties under the California Labor Code
7 Private Attorney General Act of 2004 (PAGA), California Labor Code § 2698 *et. seq.*, against
8 Defendant and/or DOES 1-100. The PAGA permits an "aggrieved employee" to bring a
9 lawsuit on behalf of himself and other current and former employees to address an employer's
10 violations of the *California Labor Code*.

11 2. This action is brought on behalf of Plaintiff and all other similarly situated aggrieved
12 employees of Defendant and/or DOES who are presently or were formerly employed by
13 Defendant and/or DOES within the State of California who are misclassified by Defendant
14 and/or DOES as exempt under the outside salesperson exemption. Plaintiff seeks penalties on
15 behalf of himself and all other similarly situated aggrieved employees of Defendant and/or
16 DOES as provided herein. This Complaint also seeks attorneys' fees and costs under the
17 PAGA, Cal. Lab. Code § 2699(g)(1).

18 3. Plaintiff and all similarly situated aggrieved employees did not spend more than half of their
19 time away from Defendant's and/or DOES' place of business in the engagement of sales. To
20 qualify for the exemption, outside salespersons must generally control their own hours.
21 However, Defendant and/or DOES controls Plaintiff's and all similarly situated aggrieved
22 employees' schedules, requiring Plaintiff and all similarly situated aggrieved employees to call
23 in to dispatch at the start of each shift to receive their assignments for the day from Defendant
24 and/or DOES.

25 4. Although working many hours away from property Defendant and/or DOES do not own or
26 lease, it controlled Plaintiff's and all similarly situated aggrieved employees' hours and
27 working conditions. Defendant and/or DOES expected Plaintiff and all similarly situated
28 aggrieved employees to work a set number of hours, remain on call for assignments throughout

the entirety of their shifts, and remain in specific service areas throughout the entirety of their shifts.

5. In addition to Defendant and/or DOES controlling the hours and working conditions of Plaintiff and all similarly situated aggrieved employees, Plaintiff and all similarly situated aggrieved employees did not spend more than half of their time engaged in sales away from Defendant's and/or DOES' place of business. In fact, Plaintiff and all similarly situated aggrieved employees are not engaged in sales at all. Instead, Plaintiff and all similarly situated aggrieved employees spend all of their time "make[ing] deliveries or service calls for the purpose of installing, replacing, repairing, removing, or servicing a product," tasks which are explicitly excluded from the outside salesperson exemption under Labor Code and Industrial Welfare Commission Wage Order 16-2001. Furthermore, because Plaintiff's and all similarly situated aggrieved employees' hours, schedules, and locations of work are controlled entirely by Defendant and/or DOES, the work Plaintiff and all similarly situated aggrieved employees were performing cannot be considered to have been performed away from Defendant's and/or DOES' place of business for purposes of the outside salesperson exemption under Labor Code and Industrial Welfare Commission Wage Order 16-2001. Thus, Plaintiff and all similarly situated aggrieved employees do not qualify for the exemption and are entitled to all protections that non-exempt employees are under the Labor Code and Industrial Welfare Commission Wage Order 16-2001.

6. By misclassifying Plaintiff and all similarly situated aggrieved employees as exempt under the outside salesperson exemption, Defendant and/or DOES have sought to avoid their legal obligations as under the California Labor Code. Pursuant to their misclassification of Plaintiff and all similarly situated aggrieved employees, Defendant and/or DOES have sought to avoid and have violated their duty to provide meal and rest periods, pay all wages owed for all hours worked, and reimburse business expenses.

7. Defendant and/or DOES may not lawfully avoid these legal obligations by labeling Plaintiff and all similarly situated aggrieved employees as "exempt," when Plaintiff and all similarly situated aggrieved employees are legally "non-exempt" under California law. Thus, under

California law, Plaintiff and similarly situated aggrieved employees should be: provided meal periods; authorized and permitted to take rest periods; paid one hour of premium pay for all unprovided meal periods; paid one hour of premium pay for all rest periods that were not authorized and/or permitted; paid penalties for not being provided itemized wage statements; paid compensation for all time worked at the regular, overtime or double time rate; paid penalties for not being paid timely at the time of termination; paid all wages owed twice per month; reimbursed for business expenses; and permitted to take lawful paid sick leave.

8. At all times mentioned herein, Defendant and/or DOES controlled the working conditions of Plaintiff and similarly situated aggrieved employees including, but not limited to, having the authority to hire and fire Plaintiff and the other similarly situated aggrieved employees, setting the wages of Plaintiff and similarly situated aggrieved employees, and instructing Plaintiff and similarly situated aggrieved employees when and/or where to work. In addition, Defendant and/or DOES developed, wrote, dictated, approved and/or authorized wage and hour policies and/or practices that Plaintiff and similarly situated aggrieved employees labored under. These policies and/or practices included, but were not limited to, policies and/or practices regarding meal periods, straight time, overtime, double time, rest periods, wage statements, paying compensation at time of termination, timing of payment, paid sick leave, and business expense reimbursement. Further, Defendant and/or DOES had the ability to prevent Plaintiff and the similarly situated aggrieved employees from working.

II. JURISDICTION AND VENUE

9. Plaintiff is an individual residing in California. Plaintiff was employed by Defendant and/or DOES in California. Plaintiff, and each of the aggrieved employees, were employees of Defendant and/or DOES, and/or its operating divisions and subsidiaries, within the State of California. Plaintiff and each of the aggrieved employees were subject to the unlawful policies beginning one (1) year prior to the date Plaintiff sent Notice to the State of California Labor and Workforce Development Agency (LWDA).
10. Venue as to each Defendant and/or DOE is proper in this judicial district. Each Defendant and/or DOE operates facilities, employs hourly employees, conducts business, and commits

1 *California Labor Code* violations within Alameda County and California. Each Defendant
2 and/or DOE is within the jurisdiction of this Court for service of process purposes. The
3 unlawful acts alleged herein have a direct effect on Plaintiff and the other aggrieved employees
4 situated within the State of California and within Alameda County. Defendant and/or DOES
5 employ numerous aggrieved employees in California and/or Alameda County.

- 6 11. Plaintiff brings this action on behalf of himself and the other aggrieved employees of
7 Defendant and/or DOES pursuant to the PAGA. Plaintiff, as personal representatives of the
8 general public, will and does seek to recover any and all penalties for each and every violation
9 shown to exist or to have occurred during the one (1) year period before Plaintiff filed Notice
10 with the LWDA of his intent to bring this action, in an amount according to proof, as to those
11 penalties that are otherwise only available to public agency enforcement actions. Funds
12 recovered will be distributed in accordance with the PAGA, with at least seventy-five (75)
13 percent of the penalties recovered being reimbursed to the State of California and the LWDA.
- 14 12. There is no federal question at issue as the issues herein are based solely upon California
15 statutes and law, including the *California Labor Code*, IWC Wage Orders, *Code of Civil*
16 *Procedure*, and *Civil Code*.
- 17 13. The California Superior Court also has jurisdiction in this matter because the penalties sought
18 exceed the minimum jurisdictional limits of the Superior Court and will be established at trial,
19 according to proof. Defendant and/or DOES either own, maintain offices, transact business,
20 have an agent or agents, have their principal place of business in, and/or otherwise are found
21 within the County of Alameda, California.

22 **III. THE PARTIES**

23 **A. Plaintiff**

- 24 14. Plaintiff, a former employee of Defendant and/or DOES, and similar aggrieved employees
25 were and are entitled to statutory meal periods, statutory rest periods, accurate itemized wage
26 statements, compensation for all time worked at the regular, overtime, and doubletime rate,
27 permitted to take lawful paid sick leave, to be paid timely pursuant to California law, to receive
28 timely wages at the time of termination, and to be reimbursed for business expenses.

1 15. Plaintiff and similar aggrieved employees were and are employed in the State of California by
2 the Defendant and/or DOES as exempt employees during the relevant time period. Through
3 Defendant's and/or DOES' misclassification scheme, Plaintiff and similar aggrieved
4 employees should have been employed as non-exempt hourly employees under California law.

5 16. A notice correspondence showing compliance with *Cal. Lab. Code* § 2699.3 was sent to the
6 LWDA and Defendant on June 27, 2024. This notice demonstrates that Plaintiff is an aggrieved
7 employee and has standing to bring a representative action on behalf of the LWDA and as a
8 private attorney general. No notice of cure by Defendant and/or DOES was provided and no
9 notice of investigation was received from the LWDA in the statutorily proscribed sixty-five
10 (65) day period since the mailing of the notice of the action. Accordingly, Plaintiff files this
11 action as a "Representative Action" as authorized by *Cal. Lab. Code* § 2699.3(a)(2)(C).

12 **B. Defendant**

13 17. Defendant and/or DOES operate throughout the State of California and provide inspections,
14 repairs, replacements, or installations of residential and commercial plumbing equipment or
15 services for Defendant's and/or DOES' customers.

16 18. Defendant's and/or DOES' principal place of business was/is in the State of California.

17 19. Defendant and/or DOES have numerous offices and/or contracts in the State of California.

18 20. California is the nerve center of Defendant's and/or DOES' operations.

19 21. Plaintiff is ignorant of the true names, capacities, relationships and extent of participation in
20 the conduct alleged, of the Defendants sued as DOES 1 through 100, inclusive, but on
21 information and belief alleges that said Defendants are now, and/or at all times mentioned in
22 this Complaint were doing business in the State of California and/or throughout the United
23 States. Plaintiff is informed and believes that each of the Defendants designated as a DOE is
24 legally responsible in some manner for the unlawful acts alleged. Plaintiff will amend this
25 Complaint to allege the true names and capacities of the DOE Defendants when ascertained.

26 22. Plaintiff is informed and believes each Defendant acted, in whole or in part, in all respects
27 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
28 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally

1 attributable to the other Defendants as each Defendant has ratified, approved, and/or authorized
2 the acts of each of the remaining Defendants.

- 3 23. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 100 are partners,
4 agents, owners, and/or shareholders of Defendant and/or DOES and were acting on behalf of
5 Defendant and/or DOES at all times.

6 **IV. GENERAL ALLEGATIONS**

- 7 24. During all, or a portion, of the one (1) year period before Plaintiff filed Notice of his claims
8 with the LWDA, Plaintiff and each of the aggrieved employees were employed by Defendant
9 and/or DOES in the State of California. Plaintiff and the other aggrieved employees are
10 composed of all employees of Defendant and/or DOES in the State of California who are
11 misclassified by Defendant and/or DOES as exempt under the outside salesperson exemption.

- 12 25. Plaintiff and all similarly situated aggrieved employees did not spend more than half of their
13 time away from Defendant's and/or DOES' place of business in the engagement of sales. To
14 qualify for the exemption, outside salespersons must generally control their own hours.
15 However, Defendant and/or DOES controls Plaintiff's and all similarly situated aggrieved
16 employees' schedules, requiring Plaintiff and all similarly situated aggrieved employees to call
17 in to dispatch at the start of each shift to receive their assignments for the day from Defendant
18 and/or DOES.

- 19 26. Although working many hours away from property Defendant and/or DOES do not own or
20 lease, it controlled Plaintiff's and all similarly situated aggrieved employees' hours and
21 working conditions. Defendant and/or DOES expected Plaintiff and all similarly situated
22 aggrieved employees to work a set number of hours, remain on call for assignments throughout
23 the entirety of their shifts, and remain in specific service areas throughout the entirety of their
24 shifts.

- 25 27. In addition to Defendant and/or DOES controlling the hours and working conditions of
26 Plaintiff and all similarly situated aggrieved employees, Plaintiff and all similarly situated
27 aggrieved employees did not spend more than half of their time engaged in sales away from
28 Defendant's and/or DOES' place of business. In fact, Plaintiff and all similarly situated

1 aggrieved employees are not engaged in sales at all. Instead, Plaintiff and all similarly situated
2 aggrieved employees spend all of their time “make[ing] deliveries or service calls for the
3 purpose of installing, replacing, repairing, removing, or servicing a product,” tasks which are
4 explicitly excluded from the outside salesperson exemption under Labor Code and Industrial
5 Welfare Commission Wage Order 16-2001. Furthermore, because Plaintiff’s and all similarly
6 situated aggrieved employees’ hours, schedules, and locations of work are controlled entirely
7 by Defendant and/or DOES, the work Plaintiff and all similarly situated aggrieved employees
8 were performing cannot be considered to have been performed away from Defendant’s and/or
9 DOES’ place of business for purposes of the outside salesperson exemption under Labor Code
10 and Industrial Welfare Commission Wage Order 16-2001. Thus, Plaintiff and all similarly
11 situated aggrieved employees do not qualify for the exemption and are entitled to all
12 protections that non-exempt employees are under the Labor Code and Industrial Welfare
13 Commission Wage Order 16-2001.

14 28. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
15 Plaintiff and the aggrieved employees were entitled to be paid for all hours worked at the
16 minimum, regular, overtime, and/or doubletime rate of pay.

17 29. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
18 Plaintiff and the aggrieved employees were entitled to be provided legally compliant meal
19 periods in a timely manner or payment of one hour of pay as additional compensation at
20 Plaintiff’s and the aggrieved employees’ regular rate of pay when they did not receive a timely,
21 uninterrupted meal period.

22 30. By failing to provide a duty-free meal period of not less than thirty (30) minutes for every shift
23 of at least five (5) hours worked per day by Plaintiff and all aggrieved employees, and by
24 failing to provide compensation for these unprovided meal periods, Defendant and/or DOES
25 willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 16-2001,
26 and California Code of Regulations, Section 11070(11). In addition, Defendant and/or DOES
27 failed to provide Plaintiff and the other aggrieved employees another duty-free meal period of
28 not less than thirty (30) minutes for every shift of more than ten (10) hours per day.

31. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to be authorized and/or permitted to take legally compliant rest periods in a timely manner or payment of one hour of pay as additional compensation at Plaintiff's and the aggrieved employees' regular rate of pay when they were not authorized and/or permitted to take a legally compliant rest period.
32. By failing to provide paid ten (10) minute rest periods for every four (4) hours or major fraction thereof, worked per day by Plaintiff and all aggrieved employees and by failing to provide compensation for these periods, Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 226.7, IWC Wage Order No. 16-2001, and California Code of Regulations, Section 11070(12).
33. At all times mentioned herein, Defendant and/or DOES failed to pay all wages owed to Plaintiff and to other terminated or resigned members of the aggrieved employees and failed to timely pay wages during employment.
34. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the aggrieved employees all wages earned twice per month.
35. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that Plaintiff and the aggrieved employees were entitled to receive complete and accurate pay statements in accordance with California law.
36. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they were not providing complete and accurate pay statements in accordance with California law to Plaintiff and the aggrieved employees.
37. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that they had a duty to compensate Plaintiff and the other aggrieved employees in accordance with California law, and that Defendant and DOES had the ability to pay such compensation, but willfully and intentionally failed to do so, and Defendant and DOES falsely represented to Plaintiff and the other aggrieved employees that they were properly compensating Plaintiff and the other aggrieved employees.
38. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that

- 1 Plaintiff and the other aggrieved employees were entitled to timely wages at the time of
2 termination. Defendant and/or DOES did not pay all timely wages owed, straight-time wages
3 owed, meal period premiums, and/or rest period premiums owed at the time of termination.
- 4 39. At all times mentioned herein, Defendant and/or DOES failed to pay Plaintiff and the other
5 aggrieved employees a sum certain at the time of termination or within seventy-two (72) hours
6 of their resignation, and have failed to pay those sums for thirty (30) days thereafter.
- 7 40. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
8 Plaintiff and the aggrieved employees were entitled to be reimbursed for business expenses in
9 accordance with California law.
- 10 41. At all times mentioned herein, Defendant and/or DOES knew and/or should have known that
11 it should have adopted a paid sick leave policy for Plaintiff and the aggrieved employees
12 complaint with California law.
- 13 42. Plaintiff brings this action on behalf of himself and all other aggrieved employees defined as
14 all non-exempt hourly employees of Defendant and/or DOES in California, employed
15 beginning one year prior to the date Plaintiff sent Notice to the LWDA.
- 16 43. Plaintiff reserves the right to amend or modify the definition of aggrieved employees with
17 respect to the issues or in any other way.

18 **FIRST CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
19 **Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Straight, Regular Rate Wages**
20 **for All Work Performed (Cal. Lab. Code §2698 et. seq.).**

- 21 44. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
22 as if fully plead.
- 23 45. It is fundamental that an employer must pay its employees for the time worked. Cal. Lab.
24 Code § 222 prohibits the withholding on part of a wage. Cal. Lab. Code § 223 prohibits the
25 pay of less than a statutory or contractual wage scale. Cal. Lab. Code §§ 1194-1197.1 prohibits
26 the payment of less than the minimum wage. Cal. Lab. Code § 224 only permits deductions
27 from wages when the employer is required or empowered to do so by state or federal law or
28 when the deduction is expressly authorized in writing by the employee for specified purposes

that do not in effect reduce the agreed upon wage.

46. Section 1197.1 of the California Labor Code states “[a]ny employer or other person acting individually as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed by an applicable state or local law, or by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties pursuant to Section 203.”

47. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the aggrieved employees endure substantial hours performing non-sales work, such as, but not limited to, driving to and from customer locations, driving to and from the yard for supplies, meetings, and waiting on standby for assignments from dispatch, all of which is not compensated from the commission.

48. Furthermore, when Plaintiff and the aggrieved employees are able to take meal periods, Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES, thereby denying them the right to be completely free from employer control under California law.

49. Plaintiff and the aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay Plaintiff and similarly aggrieved employees for meal period time when Plaintiff and the aggrieved employees were not relieved of all duties and/or employer control.

50. Defendant and/or DOES committed the acts alleged herein knowingly and willfully, with the wrongful and deliberate intention of injuring Plaintiff and the aggrieved employees. Defendant and/or DOES acted with malice or in conscious disregard of Plaintiff’s and the aggrieved employees’ rights.

51. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid

wages, and lost interest on such wages, and expenses.

52. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

53. Plaintiff, as a former non-exempt employee of Defendant and/or DOES who Defendant and/or DOES failed to pay all wages, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

54. Plaintiff, as a representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (DLSE). This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: sections 510, 1194, 1197, and 1199.

55. Pursuant to *Cal. Lab. Code* § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per *Cal. Lab. Code* § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per *Cal. Lab. Code* § 2699(f)(2).

56. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to *Cal. Lab. Code* § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under *Cal. Lab. Code* § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to *Cal. Lab. Code* § 558(a).

SECOND CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay All Overtime and Double time Wages Owed

57. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

1 58. Cal. Lab. Code § 510 states that eight hours of labor constitutes a day's work. Any work in
2 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek
3 and the first eight hours worked on the seventh day of work in any one workweek shall be
4 compensated at the rate of no less than one and one-half times the regular rate of pay for an
5 employee.

6 59. Cal. Lab. Code § 510 dictates that any work in excess of 12 hours in one day shall be
7 compensated at the rate of no less than twice the regular rate of pay for an employee. In
8 addition, any work in excess of eight hours on any seventh day of a workweek shall be
9 compensated at the rate of no less than twice the regular rate of pay of an employee.

10 60. Defendant and/or DOES failed to pay overtime when Plaintiff and the aggrieved employees
11 worked over eight (8) hours per day and when they worked over forty (40) hours per week.

12 61. Plaintiff and the aggrieved employees were deprived of wages for overtime hours worked
13 because Defendant and/or DOES failed to pay them overtime wages for all overtime hours
14 worked. This resulted in Plaintiff and the aggrieved employees not being paid all overtime
15 wages owed to them.

16 62. Defendant and/or DOES also failed to pay Plaintiff and the aggrieved employees for all hours
17 worked, including hours worked over eight (8) hours in a day and forty (40) hours in a week,
18 thus depriving Plaintiff and the aggrieved employees of overtime wages.

19 63. Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved
20 employees for all hours worked. Defendant and/or DOES only pay commission to Plaintiff and
21 the aggrieved employees, which only pays a percentage of sales. Plaintiff and the aggrieved
22 employees endure substantial hours performing non-sales work, such as, but not limited to,
23 driving to and from customer locations, driving to and from the yard for supplies, meetings,
24 and waiting on standby for assignments from dispatch, all of which is not compensated from
25 the commission. When Plaintiff and the aggrieved employees work over eight (8) hours in a
26 shift and forty (40) hours in a week, these unpaid hours must be compensated at an overtime
27 rate.

28 64. Furthermore, when Plaintiff and the aggrieved employees are able to take meal periods,

1 Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control
2 during their meal periods. Specifically, Plaintiff and the aggrieved employees worked through
3 their meal periods to satisfy their demanding work duties imposed by Defendant and/or DOES,
4 thereby denying them the right to be completely free from employer control under California
5 law. When Plaintiff and the aggrieved employees work over eight (8) hours in a shift and forty
6 (40) hours in a week, these unpaid hours must be compensated at an overtime rate.

7 65. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
8 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff and the aggrieved
9 employees by failing to pay Plaintiff and the aggrieved employees for time when Plaintiff and
10 the aggrieved employees were not relieved of all duties and/or employer control. By failing to
11 pay for this time when Plaintiff and the aggrieved employees work over eight (8) hours in a
12 shift and forty (40) hours in a week, these unpaid hours must be compensated at an overtime
13 rate.

14 66. Plaintiff and the aggrieved employees have suffered, and continue to suffer, substantial unpaid
15 wages, and lost interest on such wages, and expenses.

16 67. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
17 and/or DOES in California and who Defendant and/or DOES classified as exempt.

18 68. Plaintiff, as a representative of the people of the State of California, will seek any and all
19 penalties otherwise capable of being collected by the Labor commission and/or the Department
20 of Labor Standards Enforcement (DLSE) for violations of Cal. Lab. Code § 510.

21 69. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
22 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
23 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
24 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

26 70. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
27 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
28 chapter or any provisions regulating hours and days of the week of the Industrial Welfare

Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

THIRD CAUSE OF ACTION AGAINST DEFENDANT AND/DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Meal Periods (Cal. Lab. Code §2698 et. seq.).

71. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

72. Under Cal. Lab. Code § 512, and IWC Wage Order 16-2001, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During this meal period of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

73. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of not less than thirty (30) minutes.

74. Under Cal. Lab. Code § 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

75. Defendant and/or DOES breached the legal duty to provide meal periods to employees by imposing a continuous and consistent policy requiring Plaintiff and the aggrieved employees to work through their meal periods to satisfy the demanding workload duties imposed by Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law. Mainly, Defendant and/or DOES relied on its misclassification of Plaintiff and the aggrieved employees as exempt in

1 failing to provide meal periods.

2 76. When Plaintiff and the aggrieved employees are able to take a meal period, Plaintiff and the
3 aggrieved employees are not relieved of all duties and/or employer control during their meal
4 periods. For example, they always have to answer calls from Defendant and/or DOES.

5 77. Alternatively, Defendant and/or DOES breached the legal duty to provide meal periods to
6 employees by failing to provide employees with thirty (30) minute meal periods within the
7 timeframes outlined by California law. Specifically, Defendant and/or DOES fail to provide
8 Plaintiff and the aggrieved employees with meal periods of thirty (30) minutes in length, if at
9 all, within the first five (5) continuous hours of work and fail to provide Plaintiff and the
10 aggrieved employees with second meal periods of thirty (30) minutes in length, if at all, within
11 the first ten (10) continuous hours of work.

12 78. Furthermore, Defendant and/or DOES fail to keep accurate records of meal periods for Plaintiff
13 and the aggrieved employees.

14 79. By failing to provide statutory first and/or second meal periods, and by failing to provide
15 compensation for unprovided meal periods, as alleged above, Defendant and/or DOES
16 willfully violated the provisions of the Cal. Lab. Code §§ 226.7 and 512.

17 80. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
18 and/or DOES in California and who Defendant and/or DOES classified as exempt.

19 81. Plaintiff, as a non-exempt employee who unlawfully was deprived of first and second meal
20 periods, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
21 has satisfied all prerequisites to serve as a representative of the general public to enforce
22 California's labor laws, and the penalty provisions identified in *Cal. Lab. Code* § 2699.5.

23 82. Plaintiff, as a representative of the people of the State of California, will seek all penalties
24 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
25 each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that Section
26 2699.3(a) applies to any alleged violation of the following provisions: sections 226.7, and 512.

27 83. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
28 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred

dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

84. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FOURTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Provide Rest Periods (Cal. Lab. Code §2698 et. seq.).

85. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

86. Industrial Welfare Commission Order No. 16-2001 section 11(A) states “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work week 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 or major fraction thereof.”

87. Defendant and/or DOES failed to provide rest periods to Plaintiff and the aggrieved employees.

88. Defendant and/or DOES have had a consistent policy and/or practice of not providing duty free paid ten (10) minute paid rest periods for every four (4) hours worked, or a major fraction thereof, to Plaintiff and the aggrieved employees.

89. Defendant and/or DOES in their commission pay structure did not compensate Plaintiff and the aggrieved employees for paid-rest periods Defendant and/or DOES did not separately pay Plaintiff and the aggrieved employees for 10-minute rest periods. In addition, Defendant and/or DOES breached the legal duty to provide rest periods to Plaintiff and the aggrieved employees by imposing a continuous and consistent policy of requiring Plaintiff and the aggrieved employees to work through their rest periods to satisfy the demanding workload duties imposed

by Defendant and/or DOES, thereby denying Plaintiff and the aggrieved employees of the right to be completely free from employer control under California law.

90. Additionally, Defendant and/or DOES have a continuous policy and practice that fails to provide Plaintiff and the aggrieved employees with rest periods “at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.” Specifically, Defendant and/or DOES do not provide Plaintiff and the aggrieved employees with rest periods consisting of ten (10) minutes net rest time, nor do they provide them with a rest period per four (4) hours worked or major fraction thereof.

91. Further, when Plaintiff and the aggrieved employees are able to take a rest period, Plaintiff and the aggrieved employees are not relieved of all duties and/or employer control during their rest periods. For example, they always have to answer calls from Defendant and/or DOES.

92. By failing to provide rest periods for every four (4) hours or major fraction thereof worked per day by non-exempt employees, and by failing to provide compensation for these unprovided periods, as alleged above, Defendant and/or DOES willfully violated the provisions of Cal. Lab. Code § 226.7 and Industrial Welfare Commission Order No. 16-2001 section 11(A).

93. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

94. Plaintiff—a non-exempt employee who was unlawfully deprived of paid ten (10) minute rest periods—is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California’s labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 226.7.

95. Plaintiff, as a representative of the people of the State of California, will seek all penalties otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes each of the following, as set forth in *Cal. Lab. Code* § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the following provisions: section 226.7.

96. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred

dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

97. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

FIFTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failure to Pay Wages Due at Termination and During Employment (Cal. Lab. Code §2698 et. seq.).

98. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

99. Defendant and/or DOES and/or their officers and/or managing agents willfully failed to pay, in a timely manner, wages owed to Plaintiff and the other aggrieved employees who left Defendant's and/or DOES' employ or who were terminated.

100. Plaintiff and/or the other aggrieved employees who ended their employment with Defendant and/or DOES during the last year were entitled to be promptly paid all lawful compensation, and other premiums, as required by Cal. Lab. Code §§ 201 through 203.

101. At all relevant times, Cal. Lab. 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 if an employee quits his or her employment, his or her wages shall become due and payable no later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours 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.

102. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to pay Plaintiff and the other aggrieved employees who are no longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within seventy-two (72) hours of their

1 leaving Defendant's and/or DOES' employ.

2 103. Defendant and/or DOES also have a continuous policy of not providing all final wages owed
3 to employees who are fired at the time of termination or who quit at all, let alone within
4 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ.

5 104. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff
6 and the aggrieved employees for all hours worked. Defendant and/or DOES only pay
7 commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales.
8 Plaintiff and the aggrieved employees endure substantial hours performing non-sales work,
9 such as, but not limited to, driving to and from customer locations, driving to and from the
10 yard for supplies, meetings, and waiting on standby for assignments from dispatch, all of which
11 is not compensated from the commission.

12 105. Plaintiff and the aggrieved employees are also informed and believe and thereon allege that
13 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay
14 Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved
15 employees were not relieved of all duties and/or employer control.

16 106. Moreover, Plaintiff and the aggrieved employees are informed and believe and thereon allege
17 that Defendant and/or DOES failed to pay all meal and rest period premium wages owed to the
18 aggrieved employees at the time of their termination.

19 107. Defendant's and/or DOES' failure to pay Plaintiff and the aggrieved employees who are no
20 longer employed by Defendant and/or DOES their wages, that were earned and unpaid, within
21 seventy-two (72) hours of their leaving Defendant's and/or DOES' employ, is in violation of
22 Cal. Lab. Code §§ 201 and 202.

23 108. Cal. Lab. Code § 203 provides that when an employer willfully fails to pay wages owed, in
24 accordance with sections 201 and 202, the wages of the employee shall continue as a penalty
25 from the due date thereof at the same rate until paid or until action is commenced; but the
26 wages shall not continue for more than thirty (30) days.

27 109. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
28 and/or DOES in California and who Defendant and/or DOES classified as exempt.

1 110. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to pay all wages due
2 at termination, is an aggrieved employee with standing to bring an action under the
3 PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public to
4 enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
5 2699.5.

6 111. Plaintiff, as a representative of the people of the State of California, seeks all penalties
7 otherwise capable of being collected by the Labor Commission and/or the Department of Labor
8 Standards Enforcement ("DLSE"). This includes each of the following, as set forth in Cal. Lab.
9 Code § 2699.5, which provides that section 2699.3(a) applies to any alleged violation of the
10 following provisions: sections 201 through 203.

11 112. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
12 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
14 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

16 113. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
17 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
18 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
19 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
20 pursuant to Cal. Lab. Code § 558(a).

21 **SIXTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
22 **Private Attorneys General Act of 2004 (PAGA) for Knowing and Intentional Failure to Comply**
23 **with Itemized Employee Wage Statement Provisions (Cal. Lab. Code § 2698 *et. seq.*).**

24 114. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
25 as if fully plead.

26 115. Cal. Lab. Code § 226 subdivision (a) requires Defendant and/or DOES to itemize in wage
27 statements all deductions from payment of wages and to accurately report total hours worked
28 by Plaintiff and the other aggrieved employees. Cal. Lab. Code § 226(a) requires Defendant

1 and/or DOES, at the time of each payment of wages, to “furnish each of her or her employees,
2 either as an detachable part of the check, draft, or voucher paying the employee’s wages, or
3 separately when wages are paid by personal check or cash, an accurate itemized statement in
4 writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the
5 number of piece-rate units earned and any applicable piece rate if the employee is paid on a
6 piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the
7 employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive
8 dates of the period for which the employee is paid, (7) the name of the employee and only the
9 last four digits of his or her social security number or an employee identification number other
10 than the social security number, (8) the name and address of the legal entity that is the
11 employer...(9) all applicable hourly rates in effect during the pay period and the corresponding
12 number of hours worked at each hourly rate and the corresponding number of hours worked at
13 each hourly rate by the employee....”

14 116. Cal. Lab. Code § 226, subdivision (a) also requires that “deductions made from payment of
15 wages shall be recorded in ink or other indelible form, properly dated, showing the month, day
16 and year, and a copy of the statement and the record of the deductions shall be kept on file by
17 the employer for at least three years at the place of employment or at a central location within
18 the State of California.”

19 117. *California Labor Code* section 246(i) also requires that, “[a]n employer shall provide an
20 employee with written notice that sets forth the amount of paid sick leave available, or paid
21 time off leave an employer provides in lieu of sick leave, for use on either the employee’s
22 itemized wage statement described in Section 226 or in a separate writing provided on the
23 designated pay date with the employee’s payment of wages.”

24 118. In addition, *California Labor Code* section 204(b) requires that “all wages earned for labor in
25 excess of the normal work period shall be paid no later than the payday for the next regular
26 payroll period.” An employer complies with *California Labor Code* section 226(a) “if hours
27 worked in excess of the normal work period during the current pay period are itemized as
28 corrections on the paystub for the next regular pay period. Any corrections set out in a

subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours worked.”

119. Defendant and/or DOES have knowingly and intentionally failed to comply with *California Labor Code* section 226(a) by failing to include all of the information required by *California Labor Code* section 226(a)(1) through (9) on each and every wage statement provided to Plaintiff and the aggrieved employees.

120. In every pay period during the period of the relevant statute of limitations Defendant and/or DOES knowingly and intentionally failed to include “the name and address of the legal entity that is the employer” on the wage statements provided to Plaintiff and the aggrieved employees as *California Labor Code* section 226, subsection (a), requires.

121. In every pay period during the period of the relevant statute of limitations, Defendant and/or DOES, by virtue of their failure to pay for all time worked, knowingly and intentionally did not itemize the gross wages earned, total hours worked, net wages earned, and number of hours worked at each hourly rate on wage statements provided to Plaintiff and the aggrieved employees as *California Labor Code* section 226, subsection (a), requires.

122. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff and the aggrieved employees for all hours worked. Defendant and/or DOES only pay commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales. Plaintiff and the aggrieved employees endure substantial hours performing non-sales work, such as, but not limited to, driving to and from customer locations, driving to and from the yard for supplies, meetings, and waiting on standby for assignments from dispatch, all of which is not compensated from the commission.

123. Plaintiff and the aggrieved employees are informed and believe and thereon allege that Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved employees were not relieved of all duties and/or employer control.

124. In addition, Defendant and/or DOES failed to list all meal and rest period premiums that were owed to Plaintiff and the aggrieved employees on wage statements.

1 125. Defendant and/or DOES also failed to itemize the amount of sick leave available for
2 use on Plaintiff's and the aggrieved employees' wage statements in violation of *California*
3 *Labor Code* section 246(i).

4 126. Throughout the statutory period, because of the knowing and intentional failure by Defendant
5 and/or DOES to comply with itemized employee wage statement provisions, Plaintiff and the
6 aggrieved employees have been able to reconstruct only a reasonable estimate of the hours
7 worked and have, therefore, not received full compensation.

8 127. Further, in addition to any penalties levied upon Defendant and/or DOES for its failure to
9 comply with *Labor Code* section 226 subdivision (a)'s requirement to provide Plaintiff and the
10 aggrieved employees accurate, itemized wage statements, *Labor Code* section 226.3 assesses
11 additional penalties for the failure to keep the records required in subdivision (a) of Section
12 226. *Labor Code* section 226 subdivision (a) requires Defendant and/or DOES to maintain
13 records that "accurately shows all of the information required by this subdivision." Defendant
14 and/or DOES have violated their statutory duty to maintain records for Plaintiff and the
15 aggrieved employees that contain all of the information under *Labor Code* section 226(a)(1)
16 through (9).

17 128. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
18 and/or DOES in California and who Defendant and/or DOES classified as exempt.

19 129. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed to provide accurate
20 and itemized wage statements, is an aggrieved employee with standing to bring an action under
21 the PAGA. Plaintiff satisfied all prerequisites to serve as a representative of the general public
22 to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code §
23 2699.5.

24 130. Plaintiff, as a representative of the people of the State of California, will seek all penalties
25 otherwise capable of being collected by the Labor Commission and/or the DLSE. This includes
26 each of the following, as set forth in Cal. Lab. Code § 2699.5, which provides that § 2699.3(a)
27 applies to any alleged violation of the following provisions: sections 226, 1174, 1199.

28 131. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself

and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

132. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

SEVENTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the Private Attorneys General Act of 2004 (PAGA) for Failing to Reimburse Employees for Business Expenses (California Labor Code §2698 et. seq.)

133. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein as if fully plead.

134. California Labor Code section 2802 provides: “An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...[which includes] all reasonable costs, including, but not limited to, attorneys’ fees incurred by the employee enforcing the rights granted by this section.”

135. Plaintiff and the aggrieved employees incurred expenses necessary for the discharge of their duties without receiving reimbursement from Defendant and/or DOES. For example, Plaintiff and the aggrieved employees have to download an application on their personal cell phones to perform work for Defendant and/or DOES. Defendant and/or DOES also use Plaintiff’s and the aggrieved employees’ personal cell phones as the primary form of communication throughout the workday. Defendant and/or DOES fail to reimburse Plaintiff and the aggrieved employees for this expense.

136. In addition, Plaintiff and the aggrieved employees have to use their personal vehicles for business purposes. For example, Plaintiff and the aggrieved employees are required to drive to

1 and from client locations, as well as to and from the yard to pick up supplies. Defendant and/or
2 DOES do not reimburse Plaintiff and the aggrieved employees for any expenses associated
3 with their personal vehicles.

4 137. Furthermore, Plaintiff and the aggrieved employees cannot perform their work duties without
5 the necessary tools. Defendant and/or DOES mandate Plaintiff and the aggrieved employees
6 to purchase these tools and transport them in their personal vehicles to and from the work
7 location each day, but fail to reimburse Plaintiff and the aggrieved employees for any of the
8 costs and expenses of purchasing and maintaining them.

9 138. *California Labor Code* section 2802(a) entitles Plaintiff and the aggrieved employees to
10 reimbursement for said necessary expenditures, plus interest and expenses.

11 139. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
12 and/or DOES in California and who Defendant and/or DOES classified as exempt.

13 140. Plaintiff, as a non-exempt employee who incurred business expenses which Defendant and/or
14 DOES failed to reimburse, is an aggrieved employee with standing to bring an action under
15 the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general
16 public to enforce California's labor laws, and the penalty provisions identified in *Labor Code*
17 section 2699.5 for violations of *Labor Code* section 2802.

18 141. Pursuant to *Labor Code* section 2699(f), Plaintiff, as an aggrieved employee, on behalf of
19 himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one
20 hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation
21 per *Labor Code* section 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved
22 employee per pay period for each subsequent violation, per *Labor Code* section 2699(f)(2).

23 **EIGHTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
24 **Private Attorneys General Act of 2004 (PAGA) for Failing to Adopt a Compliant Sick Pay/Paid**
25 **Time Off Policy (California Labor Code §2698 et. seq.)**

26 142. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
27 as if fully plead.

28 143. Section 246(a)(1) of the California Labor Code states: "An employee who, on or after July 1,

2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

144. Section 246(c) of the Labor Code states: “An employee shall be entitled to use accrued paid sick days beginning on the 90th day of employment, after which day the employee may use paid sick days as they are accrued.”

145. Section 233(c) of the California Labor Code states: “An employer shall not deny an employee the right to use sick leave or discharge, threaten to discharge, demote, suspend, or in any manner discriminate against an employee for using, or attempting to exercise the right to use, sick leave to attend to an illness or the preventive care of a family member, or for any other reason specified in subdivision (a) of Section 246.5.”

146. Section 233(d) of the California Labor Code provides relief for violations of this section, stating that “[a]ny employee aggrieved by a violation of this section shall be entitled to reinstatement and actual damages or one day’s pay, whichever is greater, and to appropriate equitable relief.”

147. Section 234 of the California Labor Code further forbids employers from adopting an “absence control policy that counts sick leave taken pursuant to Section 233 as an absence that may lead to or result in discipline, discharge, demotion, or suspension is a per se violation of Section 233. An employee working under this policy is entitled to appropriate legal and equitable relief pursuant to Section 233.”

148. Defendant and/or DOES operate under an absence control policy that counts absences due to illness taken pursuant to *California Labor Code* sections 233, 248.2, and 248.6 as an unexcused absence. Thus, Defendant’s and/or DOES’ sick pay policy punishes Plaintiff and the aggrieved employees for use of protected and appropriate sick leave. Defendant and/or DOES further failed to provide paid sick days for all hours worked by Plaintiff and the aggrieved employees in compliance with these sections.

149. Further, Defendant’s and/or DOES’ sick pay policy fails to pay Plaintiff and the aggrieved employees sick pay for all appropriate and protected purposes enumerated in *California Labor Code* sections 233, 234, 246, 248.2, and 248.6

1 150. In addition, Defendant and/or DOES do not provide employees with written notice that sets
2 forth the amount of sick leave available for use, either in employees' itemized wage statements
3 or in a separate writing provided to employees on the designated pay date.

4 151. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant
5 and/or DOES in California and who Defendant and/or DOES classified as exempt.

6 152. Plaintiff, as a non-exempt employee subject to Defendant's and/or DOES' unlawful sick pay
7 policy, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff
8 has satisfied all prerequisites to serve as a representative of the general public to enforce
9 California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for
10 violations of Cal. Lab. Code §§ 233, 234, and 246.

11 153. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself
12 and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred
13 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal.
14 Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per
15 pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

16 154. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved
17 employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this
18 chapter or any provisions regulating hours and days of the week of the Industrial Welfare
19 Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages
20 pursuant to Cal. Lab. Code § 558(a).

21 **NINTH CAUSE OF ACTION AGAINST DEFENDANT AND/OR DOES: Violation of the**
22 **Private Attorneys General Act of 2004 (PAGA) for Failing to Pay Employees Twice Per Month**
23 **(Cal. Lab. Code § 2698 *et. seq.*)**

24 155. Plaintiff re-alleges and hereby incorporates each and every paragraph of this Complaint herein
25 as if fully plead.

26 156. Section 204(a) of the *California Labor Code* requires that all wages earned by any person in
27 any employment are due and payable twice during each calendar month, on days designated in
28 advance by the employer as the regular paydays.

1 157. *Cal. Lab. Code* § 226 subdivision (a) provides “[a]ll wages . . . earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in
3 advance by the employer as the regular paydays. Labor performed between the 1st and 15th
4 days, inclusive, of any calendar month shall be paid for between the 16th and 26th day of the
5 month during which the labor was performed, and labor performed between the 16th and the
6 last day, inclusive, of any calendar month shall be paid for between the 1st and 10th day of the
7 following month.”

8 158. Defendant and/or DOES have a consistent policy and/or practice of failing to pay Plaintiff and
9 the aggrieved employees twice per month. By failing to pay employees twice per month,
10 Defendant and/or DOES willfully violated the provisions of *Cal. Lab. Code* § 204(a).

11 159. During the relevant time period, Defendant and/or DOES intentionally and willfully failed to
12 pay Plaintiff and the aggrieved employees their wages, that were earned and unpaid, twice
13 during each calendar month.

14 160. As outlined above, Defendant and/or DOES have a continuous policy of not paying Plaintiff
15 and the aggrieved employees for all hours worked. Defendant and/or DOES only pay
16 commission to Plaintiff and the aggrieved employees, which only pays a percentage of sales.
17 Plaintiff and the aggrieved employees endure substantial hours performing non-sales work,
18 such as, but not limited to, driving to and from customer locations, driving to and from the
19 yard for supplies, meetings, and waiting on standby for assignments from dispatch, all of which
20 is not compensated from the commission.

21 161. Plaintiff and the aggrieved employees are informed and believe and thereon allege that
22 Defendant and/or DOES breached the legal duty to pay full wages to Plaintiff by failing to pay
23 Plaintiff and similarly aggrieved employees for time when Plaintiff and the aggrieved
24 employees were not relieved of all duties and/or employer control.

25 162. In addition, Defendant and/or DOES failed to pay all meal and rest period premiums owed to
26 Plaintiff and the aggrieved employees for Defendant’s and/or DOES’ failure to provide lawful
27 meal and rest periods.

28 163. Defendant and/or DOES failure to pay Plaintiff and the aggrieved employees their wages, that

were earned and unpaid, twice during each calendar month, is in violation of Cal. Lab. Code § 204.

164. These claims are for Plaintiff and all similarly aggrieved employees who worked for Defendant and/or DOES in California and who Defendant and/or DOES classified as exempt.

165. Plaintiff, as a non-exempt employee who Defendant and/or DOES failed pay all wages owed twice per month, is an aggrieved employee with standing to bring an action under the PAGA. Plaintiff has satisfied all prerequisites to serve as a representative of the general public to enforce California's labor laws, and the penalty provisions identified in Cal. Lab. Code § 2699.5 for violations of Cal. Lab. Code § 204.

166. Pursuant to Cal. Lab. Code § 2699(f), Plaintiff, as an aggrieved employee, on behalf of himself and the other aggrieved employees, seeks recovery of applicable civil penalties: one hundred dollars (\$100.00) for each aggrieved employee per pay period for the initial violation per Cal. Lab. Code § 2699(f)(2) and two hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent violation, per Cal. Lab. Code § 2699(f)(2).

167. In the alternative, Plaintiff, as an aggrieved employee, on behalf of himself and other aggrieved employees, seeks penalties pursuant to Cal. Lab. Code § 558 for violations pursuant to this chapter or any provisions regulating hours and days of the week of the Industrial Welfare Commission under Cal. Lab. Code § 558(a)(1) and 558(a)(2). Plaintiff is not seeking wages pursuant to Cal. Lab. Code § 558(a).

V. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, individually and on behalf of all other aggrieved employees, prays for relief and judgment against Defendant and/or DOES, jointly and severally, as follows:

- A. For penalties as provided under Cal. Lab. Code § 558(a)(1) and 558(a)(2).
- B. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for failure to provide compliant meal periods;
- C. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.* for each pay period during which an employee was underpaid due to failure to provide paid meal periods;

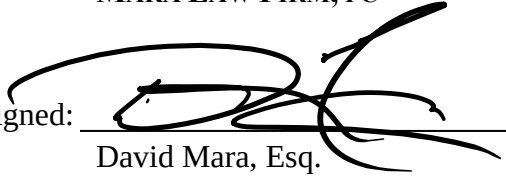
- 1 D. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
2 for failure to provide all rest periods;
- 3 E. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
4 for each pay period during which an employee was underpaid due to failure to provide paid
5 rest periods;
- 6 F. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
7 for failure to timely pay wages at separation;
- 8 G. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
9 for failure to provide compensation at the regular, overtime, and double time rate for all time
10 worked;
- 11 H. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
12 for failure to provide compensation at the minimum wage;
- 13 I. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
14 for failure to provide accurate, itemized wage statements;
- 15 J. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
16 for failure to adopt a sick pay policy compliant with California law;
- 17 K. For penalties as provided, per each violation, by the PAGA, Cal. Lab. Code § 2699, *et. seq.*
18 for failure to pay employees all wages owed twice per month;
- 19 L. For penalties as provided, per each violation, by the PAGA, *Labor Code* section 2699, *et. seq.*
20 for failure to reimburse business expenses; and
- 21 M. For reasonable attorneys' fees and costs under the PAGA, Cal. Lab. Code § 2699(g)(1).

22 **DEMAND FOR JURY TRIAL**

23 Plaintiff demands a jury trial.

24 **MARA LAW FIRM, PC**

25 Date: September 4, 2024

26 Signed: 

27 David Mara, Esq.
28 Matthew Crawford, Esq.
Attorneys for Plaintiff CASSANOVA TIGER,
on behalf of himself and all others similarly
situated, and on behalf of the general public