

1 Joseph Lavi, Esq. (SBN 209776)
2 Vincent C. Granberry, Esq. (SBN 276483)
3 Jeffrey M. Schwartz, Esq. (SBN 254916)
4 Aleksandra Urban, Esq. (SBN 277475)
5 **LAVI & EBRAHIMIAN, LLP**
6 8889 W. Olympic Boulevard, Suite 200
7 Beverly Hills, California 90211
8 Telephone: (310) 432-0000
9 Facsimile: (310) 432-0001
10 Email: jlavi@lelawfirm.com
11 vgranberry@lelawfirm.com
12 jschwartz@lelawfirm.com
13 aurban@lelawfirm.com

14 Attorneys for Plaintiff LARELL EPPS,
15 on behalf of himself and current and former aggrieved employees

16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

LARELL EPPS, on behalf of himself and current
and former aggrieved employees

Plaintiff,

vs.

NATIONAL DISTRIBUTION CENTERS, LLC;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: CIVSB2430528

PAGA ACTION

**PLAINTIFF LARELL EPPS'S
COMPLAINT FOR:**

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

COMES NOW Plaintiff LARELL EPPS ("Plaintiff"), who alleges and complains on
information and belief except as to those allegations relating to plaintiff himself/herself, which are
asserted on personal knowledge, against Defendants [NATIONAL DISTRIBUTION CENTERS,
LLC; and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

I. INTRODUCTION

1 1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
2 (“PAGA”) representative action brought by Plaintiff on behalf of the State of California,
3 himself/herself and other current and former aggrieved employees of Defendants who worked as
4 hourly non-exempt employees in California during the relevant time period seeking civil penalties
5 associated with Defendants’ violation of the Labor Code based on Defendants’ failure to provide
6 all legally required and legally compliant meal and rest periods, failure to timely pay earned wages
7 during employment, failure to provide complete and accurate wage statements, failure to timely
8 pay all unpaid wages following separation of employment. Plaintiff seeks on a representative
9 basis, following notice to the Labor and Workforce Development Agency, civil penalties,
10 reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf
11 of Plaintiff, the State of California, and others aggrieved.

12 **II. JURISDICTION AND VENUE**

13 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
14 former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks
15 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
16 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
17 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
18 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
19 aggrieved California-based hourly non-exempt employees occurred in locations throughout
20 California, including but not limited to San Bernardino County at 4815 S Hellman Avenue,
21 Ontario, CA 91762.

22 **III. PARTIES**

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

1 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
2 employed by Defendants in an hourly position at Defendants' location in San Bernardino County
3 from approximately August 2023 until on or about May 24, 2024.

4
5 1. Defendant NATIONAL DISTRIBUTION CENTERS, LLC is authorized to do
6 business within the State of California and is doing business in the State of California and/or that
7 Defendants DOES 1-50 are, and at all times relevant hereto were persons acting on behalf of
8 Defendant NATIONAL DISTRIBUTION CENTERS, LLC in the establishment of, or ratification
9 of, the aforementioned illegal wage and hour practices or policies. Defendant NATIONAL
10 DISTRIBUTION CENTERS, LLC operates in San Bernardino County and employed Plaintiff and
11 aggrieved employees in San Bernardino County, including but not limited to, at 4815 S Hellman
12 Avenue, Ontario, CA 91762.

13 2. Defendants DOES 1 through 50 are corporations or other business entities or
14 organizations of a nature unknown to Plaintiff that employed Plaintiff and aggrieved California
15 non-exempt employees, permitted Plaintiff and aggrieved employees to work, and exercised
16 control over the wages, hours and working conditions of employment of Plaintiff and aggrieved
17 employees.

18 3. Defendants DOES 51 through 100 are individuals unknown to Plaintiff. Each
19 Defendant is sued individually and in their capacity as an agent, shareholder, owner,
20 representative, manager, supervisor, independent contractor and/or employee of each defendant
21 who violated or caused to be violated the minimum wage and overtime provisions of the Labor
22 Code and/or any provision of the Industrial Welfare Commission's wage orders regulating hours
23 and days of work.

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

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

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

3 **FIRST CAUSE OF ACTION**

4 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
5 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

8
9 6. Plaintiff incorporates by reference and re-alleges each and every allegation
10 contained in this pleading as though fully set forth herein.

11 7. During Plaintiff's employment and continuing through the present, Plaintiff alleges
12 Defendants violated Labor Code sections 201, 202, 203, 204, 223, 226, 226.7, 510, 512, and the
13 applicable Wage Orders.

14 8. Specifically, Defendants have committed the following violations of California
15 Labor Code:

16 9. **Failure to pay wages to hourly non-exempt employees for workdays that**
17 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
18 current and former aggrieved California-based hourly non-exempt employees regularly worked
19 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

20 10. California law requires an employer to authorize or permit an employee an
21 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
22 all duties and the employer relinquishes control over the employee's activities prior to the
23 employee's sixth hour of work. Labor Code §§ 226.7, 512, and 1198; Wage Order 1, at § 11;
24 *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not
25 employ an employee for a work period of more than ten (10) hours per day without providing the
26 employee with a second such meal period of not less than thirty (30) minutes prior to the start of
27 the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the
28 meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on
duty" meal period is only permitted when: (1) the nature of the work prevents an employee from

1 being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal
2 periods.

3 11. If an employer fails to provide an employee a meal period in accordance with the
4 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay
5 for each workday that a legally required and compliant meal period was not provided. Labor Code
6 §§ 226.7 and 1198; Wage Order 1, at § 11.

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

11 (a) Failing to provide Plaintiff and other current and former aggrieved
12 California-based hourly non-exempt employees a second uninterrupted duty-free meal period of
13 no less than thirty (30) minutes for each workday that Plaintiff and other current and former
14 aggrieved California-based hourly non-exempt employees work shifts over ten (10) hours.

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

21 14. Finally, on occasions when Defendants paid Plaintiff and other current and former
22 aggrieved California-based hourly non-exempt employees a "premium" wage for late, missed,
23 short, on-premise, on-duty, and/or interrupted meal periods, Defendants sometimes failed to pay
24 the one (1) additional hour of pay at Plaintiff's and other current and former aggrieved California-
25 based hourly non-exempt employees' regular rate of compensation. Specifically, Defendants
26 maintained a policy, practice, and/or procedure of failing to include all remuneration such as "shift
27 premium pay", "bonus OTR", "attendance bonus", "BN200 bonus", "PTO-I", for example, when
28 calculating Plaintiff's and other current and former aggrieved California-based hourly non-exempt

1 employees' regular rate of pay for the purpose of paying meal period premium wages.

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

6 16. **Failure to pay wages to hourly non-exempt employees for workdays that**
7 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
8 current and former aggrieved California-based hourly non-exempt employees regularly worked
9 shifts of more than three-and-a-half (3.5) hours.

10 17. California law requires every employer to authorize and permit an employee a rest
11 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
12 Code § 226.7; Wage Order 1 at § 12. Under California law, "[e]mployees are entitled to 10
13 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
14 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
15 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
16 § 226.7; Wage Order 1 at § 12. Rest periods, insofar as practicable, shall be in the middle of each
17 work period. Wage Order 1 at § 12. Additionally, the rest period requirement "obligates
18 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
19 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
20 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

21 18. If the employer fails to authorize or permit a required rest period, the employer
22 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
23 the employer did not authorize or permit a legally required rest period. Labor Code § 226.7; Wage
24 Order 1 at § 12.

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

1 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
2 non-exempt employees to remain on the premises during their rest periods and on standby to be
3 readily available in case something happens during their rest periods, resulting in rest periods that
4 were not duty-free.

5 (b) Failing to provide Plaintiff and other current and former aggrieved
6 California-based hourly non-exempt employees a third uninterrupted duty-free rest period of no
7 less than ten (10) net minutes on each workday that Plaintiff and other current and former
8 aggrieved California-based hourly non-exempt employees work shifts over ten (10) hours.

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

15 21. Finally, on occasions when Defendants did pay Plaintiff and other current and
16 former aggrieved California-based hourly non-exempt employees a “premium” wage for late,
17 missed, short, on-premise, on-duty, and/or interrupted rest periods, Defendants occasionally failed
18 to pay the one (1) additional hour of pay at Plaintiff’s and other current and former aggrieved
19 California-based hourly non-exempt employees’ regular rate of compensation. Specifically,
20 Defendants maintained a policy, practice, and/or procedure of failing to include all remuneration
21 such as “shift premium pay”, “bonus OTR”, “attendance bonus”, “BN200 bonus”, “PTO-I”, for
22 example, when calculating Plaintiff’s and other current and former aggrieved California-based
23 hourly non-exempt employees’ regular rate of pay for the purpose of paying rest period premiums.

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

28 23. **Failure to timely pay earned wages during employment:** In California, wages
must be paid at least twice during each calendar month on days designated in advance by the

1 employer as regular paydays, subject to some exceptions. Labor Code § 204(a). Wages earned
2 between the 1st and 15th days, inclusive, of any calendar month must be paid between the 16th
3 and the 26th day of that month and wages earned between the 16th and the last day, inclusive, of
4 any calendar month must be paid between the 1st and 10th day of the following month. *Id.* Other
5 payroll periods such as those that are weekly, biweekly, or semimonthly, must be paid within
6 seven (7) calendar days following the close of the payroll period in which wages were earned.
7 Labor Code § 204(d).

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

16 25. **Secret payment of lower wages than designated by statute:** Labor Code section
17 223 provides that, where any statute or contract requires an employer to maintain the designated
18 wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage
19 designated by statute or contract. By engaging in the unlawful conduct alleged herein, including
20 by failing to: pay overtime wages at the applicable legal overtime rate, meal break premiums and
21 lawful sick pay at the employees' regular rate of pay, as established by Labor Code sections 226.7,
22 246, 510, 1194 and sections 11 and 12 of the applicable IWC Wage Orders, as incorporated by
23 Labor Code section 1198, Defendants secretly paid a lower wage than designated by statute while
24 purporting to pay the wages designated by statute, in violation of Labor Code section 223.

25 26. **Failure to provide complete and accurate wage statements:** Labor Code section
26 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
27 employee his or her wages, the employer must "furnish each of his or her employees ... an
28 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
employee, except for any employee whose compensation is solely based on a salary and who is

1 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
2 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
3 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
4 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
5 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
6 name of the employee and his or her social security number, (8) the name and address of the legal
7 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
8 the corresponding number of hours worked at each hourly rate by the employee.”

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

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

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

24 30. Plaintiff has complied with the procedures for bringing suit specified in Labor
25 Code section 2699.3. On June 19, 2024, Plaintiff filed a PAGA Claim Notice with the LWDA and
26 provided notice to Defendants by certified mail which provided notice of the specific provisions of
27 the Labor Code alleged to have been violated, including the facts and theories to support the
28 violations alleged.

31. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by

1 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
2 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
3 parties notice within 65 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
4 to investigate Plaintiff's claims.

5 32. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
6 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 223, 226(a),
7 226.7, and 512, During Plaintiff's employment and continuing through the present, preceding
8 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following
9 amounts:

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

14 b. For violations of Labor Code section 226(a), alternatively, two hundred
15 fifty dollars (\$250) for each employee for each pay period for the initial violation, and one
16 thousand dollars (\$1,000) for each subsequent violation, for each underpaid employee for each pay
17 period [penalty amounts established by Labor Code section 226.3].

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

22 d. For violations of Labor Code section 204, one hundred dollars (\$100) for
23 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each
24 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
25 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
26 section 210].

27 e. For violations of Labor Code section 223, one hundred dollars (\$100) for
28 each failure to pay each employee in any initial violation, and two hundred dollars (\$200) for each

1 subsequent violation, or any willful or intentional violation, for each failure to pay each employee,
2 plus 25 percent of the amount unlawfully withheld [penalty amounts established by Labor Code
3 section 225.5].
4

5 33. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
6 reasonable attorneys' fees and costs in connection with his/her claims for civil penalties.

7 **PRAYER FOR RELIEF**

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

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

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

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

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

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

20 Dated: October 7, 2024

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

23 By:

24 
25 _____
26 Joseph Lavi, Esq.
27 Vincent C. Granberry, Esq.
28 Jeffrey M. Schwartz, Esq.
Aleksandra Urban, Esq.
Attorneys for Plaintiff
LARELL EPPS
on behalf of himself and current and former
aggrieved employees