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Filed
March 3, 2025
Clerk of the Court
Superior Court of CA
County of Santa Clara
24CV450269
By: MJacobo

Attorneys for Plaintiff and the Putative Class

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

URAIWAN HARRIS, an individual, on behalf
of herself and all others similarly situated,

Plaintiff,

v.

MAGNIT, LLC, a Delaware corporation; and
DOES 1 TO 50,

Defendants.

Case Number: 24CV450269

**Joint Stipulation and ~~Proposed~~ Order to
Dismiss Class Claims, Submit Individual
Claims to Arbitration, File the FAC, and Stay
All PAGA Representative Claims**

Complaint Filed: October 24, 2024
Trial Date: None Set

JOINT STIPULATION

This stipulation is between Plaintiff Uraiwan Harris (“Plaintiff”) and Defendant Magnit, LLC (“Defendant”) (collectively, the “Parties”), as follows:

WHEREAS, on October 24, 2024, Plaintiff filed her initial class action complaint (“Complaint”) in the Superior Court for the County of Santa Clara, wherein she alleged, on behalf of herself and of all other similarly situated, causes of action against Defendant for: **(1)** failure to pay all minimum wages, **(2)** failure to pay all overtime wages, **(3)** failure to provide rest periods and pay missed rest period premiums, **(4)** failure to provide meal periods and pay missed meal period premiums, **(5)** failure to maintain accurate employment records, **(6)** failure to pay wages timely during employment, **(7)** failure to pay all wages earned and unpaid at separation, **(8)** failure to furnish accurate itemized wage statements, **(9)** failure to pay sick leave, and **(10)** violations of California’s Unfair Competition Law (Bus. & Prof. Code, §§ 17200–17210).

WHEREAS, on November 20, 2024, Defendant filed a Motion to Compel Arbitration on the grounds that Plaintiff entered into an arbitration agreement requiring that she arbitrate all employment claims against Magnit, LLC and only bring such claims on an individual basis.

WHEREAS, on January 31, 2025, the Parties met and conferred regarding Defendant’s Motion to Compel Arbitration and agreed that Plaintiff would request dismissal of all class claims, compel all individual claims to arbitration, file the First Amended Complaint (“FAC”) asserting a single cause of action under PAGA, and stay all PAGA representative claims pending arbitration.

WHEREAS, no potential class members have been notified of the preparation, filing, or pendency of this action by Plaintiff or Plaintiff’s Counsel either formally, informally, orally, in writing, individually, or as a group.

WHEREAS, Plaintiff has not been, and will not be, paid any consideration, either direct or indirect, for the dismissal of their class action claims. This dismissal is voluntary on Plaintiff’s part, and not the result of any settlement between the Parties. Thus, the Court has not approved any settlement or entered final judgment after approving a settlement.

1 **WHEREAS**, because no class has been certified, the class action allegations can be dismissed
2 with the Court’s approval pursuant to Rule 3.770(a) of the California Rules of Court, and without notice
3 to putative class members under Rule 3.770(c) of the California Rules of Court.

4 **WHEREAS**, the Parties respectfully request that the Court approve the dismissal of Plaintiff’s
5 class action claims without prejudice, pursuant to Rule 3.770(a) of the California Rules of Court and
6 admit the attached FAC as the Operative Complaint in this action.

7 **NOW THEREFORE, IT IS HEREBY STIPULATED AND AGREED**, by and between the
8 Parties, subject to the approval of the Court, as follows:

- 9 1. Plaintiff’s class claims are dismissed without prejudice.
- 10 2. Plaintiff’s FAC will be deemed the Operative Complaint in this action, attached hereto
11 as **Exhibit A**.
- 12 3. The remaining PAGA action shall be stayed pending the completion of the arbitration
13 pursuant to Code of Civil Procedure section 1281.4; however, the Court shall retain jurisdiction to
14 enforce the arbitrator’s award, if any. Defendant will not be required to file any responsive pleading
15 to the FAC until 30 days after this Court lifts the stay of the PAGA action, or pursuant to the Parties’
16 stipulation.
- 17 4. The Parties agree to bear their own attorneys’ fees and costs incurred as of the date of
18 filing this stipulation and Defendant agrees to waive any and all attorneys’ fees and costs relating to
19 Plaintiff’s Request for Dismissal of the class claims, without prejudice.
- 20 5. The Parties request that the Case Management Conference set for March 27, 2025, be
21 continued for approximately one year to allow the Parties to complete arbitration of Plaintiff’s
22 individual claims.

1 Dated: February 26, 2025

MELMED LAW GROUP P.C.

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4 **JONATHAN MELMED**

5 Attorney for Plaintiff and the Putative Class
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~~PROPOSED~~ ORDER

Pursuant to the California Rules of Court, Rule 3.770, and GOOD CAUSE appearing, the Court hereby ORDERS the following:

1. Plaintiff's class claims are dismissed without prejudice.
2. Plaintiff's FAC will be deemed the Operative Complaint in this action.
3. The remaining PAGA action shall be stayed pending the completion of the arbitration pursuant to Code of Civil Procedure section 1281.4; however, the Court shall retain jurisdiction to enforce the arbitrator's award, if any. Defendant will not be required to file any responsive pleading to the FAC until 30 days after this Court lifts the stay of the PAGA action, or pursuant to the Parties' stipulation.
4. The Parties agree to bear their own attorneys' fees and costs incurred as of the date of filing this stipulation and Defendant agrees to waive any and all attorneys' fees and costs relating to Plaintiff's Request for Dismissal of the class claims, without prejudice.
5. The Parties request that the Case Management Conference set for March 27, 2025, be continued for approximately one year to February 26, 2026, at 2:30 p.m., to allow the Parties to complete arbitration of Plaintiff's individual claims.
The motion hearing scheduled for May 22, 2025 is VACATED.

IT IS SO ORDERED.

DATED: 2/27/2025 9:59:15 AM

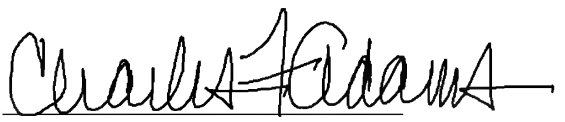
By: 
Judge of the Superior Court, County of Santa Clara
Hon. Charles Adams

Exhibit A

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Attorneys for Plaintiff and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

URAIWAN HARRIS, an individual, on behalf
of herself and the State of California, as a private
attorney general,

Plaintiff,

v.

MAGNIT, LLC, a Delaware corporation; and
DOES 1 TO 50,

Defendants.

Case Number: 24CV450269

**First Amended Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
("PAGA") for Violations of California
Labor Code Sections 201, 202, 203, 204,
210, 226, 226.3, 226.7, 246, 510, 512,
1174, 1185, 1194, 1194.2, 1197, 1197.1,
1198, 1198.5, 1199, and Other Provisions
of the California Labor Code.

1 Plaintiff Uraiwan Harris (“Plaintiff”), on behalf of herself and the State of California, as a
2 private attorney general, complains and alleges of defendants Magnit, LLC and Does 1 to 50
3 (collectively, “Defendants”), and each of them, as follows:

4 **I. INTRODUCTION**

5 1. This action is a representative action brought pursuant to the California Labor Code
6 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
7 through 2699.6.

8 2. The “PAGA Period” as used herein, is defined as the period from October 24, 2023, and
9 continuing into the present and ongoing.

10 3. This PAGA action is brought on behalf of Plaintiff, the State of California as private
11 attorney general, and on behalf of the following aggrieved employees: *All individuals who are or were*
12 *employed by Defendants as non-exempt employees in California during the PAGA Period* (the
13 “Aggrieved Employees”).

14 4. Plaintiff is informed and believes and thereon alleges that the California Industrial
15 Welfare Commission (“IWC”) Wage Order applicable to the facts of this case is IWC Wage Order 4-
16 2001 (the “Applicable Wage Order”) and possibly others that may be applicable. (Cal. Code of Regs.,
17 tit. 8, § 11040.) Plaintiff reserves the right to amend or modify the definition of “Applicable Wage
18 Order” with greater specificity or add additional IWC Wage Orders if additional applicable wage orders
19 are discovered in litigation.

20 **II. JURISDICTION & VENUE**

21 5. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure section
23 410.10 because this is a civil action in which the matter in controversy, exclusive of interest, exceeds
24 \$25,000, and because each cause of action asserted arises under the laws of the State of California or
25 is subject to adjudication in the courts of the State of California.

26 6. This Court has personal jurisdiction over Defendants because Defendants have caused
27 injuries in the County of Santa Clara and the State of California through their acts, and by their violation
28 of the California Labor Code and California state common law. Defendants transact millions of dollars

1 of business within the State of California. Defendants own, maintain offices, transact business, have an
2 agent or agents within the County of Santa Clara, and/or otherwise are found within the County of
3 Santa Clara, and Defendants are within the jurisdiction of this Court for purposes of service of process.

4 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of the
5 Code of Civil Procedure. Defendants operate within California and do business within Santa Clara
6 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of
7 Defendants' employees identified above within Santa Clara County and surrounding counties where
8 Defendants may remotely operate. (See *Crestwood Behavioral Health, Inc. v. Superior Court of*
9 *Alameda County* (2021) 60 Cal.App.5th 1069, 1075 ["We hold that venue is proper in any county in
10 which an aggrieved employee worked and Labor Code violations allegedly occurred."].)

11 **III. THE PARTIES**

12 **A. PLAINTIFF**

13 8. At all relevant times, Plaintiff, who is over the age of 18, was and currently is a citizen
14 of California residing in the State of California. Defendants employed Plaintiff as a non-exempt hourly
15 employee in the County of Santa Clara.

16 9. Plaintiff brings this action on behalf of herself and the State of California, as a private
17 attorney general, and on behalf of the following group of aggrieved employees: *All individuals who*
18 *are or were employed by Defendants as non-exempt employees in California during the PAGA Period*
19 (the "Aggrieved Employees").

20 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
21 Defendants during the relevant statutory period.

22 **B. DEFENDANTS**

23 11. Plaintiff is informed and believes and thereon alleges that Defendants were authorized
24 to and doing business in Santa Clara County and is and/or was the legal employer of Plaintiff and the
25 other Aggrieved Employees during the applicable statutory periods. Plaintiff and the other Aggrieved
26 Employees were, and are, subject to Defendants' policies and/or practices complained of herein and
27 have been deprived of the rights guaranteed to them by: California Labor Code sections 201, 202, 203,
28 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,

1 1199, and others that may be applicable; California Business and Professions Code sections 17200
2 through 17210 (“UCL”); and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040).

3 12. Plaintiff is informed and believes, and based thereon alleges, that during the PAGA
4 Period, Defendants did (and continue to do) business in the State of California, County of Santa Clara.

5 13. Plaintiff does not know the true names or capacities, whether individual, partner, or
6 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said defendants
7 are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this
8 complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and
9 thereon alleges, that each of said fictitious defendants, whether individual, partners, or corporate, were
10 responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff
11 and the other Aggrieved Employees to be subject to the unlawful employment practices, wrongs,
12 injuries, and damages complained of herein.

13 14. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
14 herein, Defendants were and/or are the employers of Plaintiff and the other Aggrieved Employees. At
15 all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter
16 alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them,
17 were the agents, representatives, and employees of each and every one of the other Defendants, and at
18 all times herein mentioned were acting within the course and scope of said agency, representation, and
19 employment. Defendants, and each of them, approved of, condoned, or otherwise ratified every one of
20 the acts or omissions complained of herein.

21 15. Plaintiff is further informed, and believes, and thereon alleges, that at all times
22 mentioned herein, that Defendants, and each of them, are the alter egos of one another and that there
23 existed and now exists a unity of interest and ownership between them such that the individuality and
24 separateness of each of them has ceased. Plaintiff is further informed, and believes, and thereon alleges,
25 that at all times mentioned herein, that Defendants, and each of them, have been and now are mere
26 shells and naked frameworks that their principal uses for the conduct of that Defendant’s own business,
27 property, and affairs, for which Defendants, and each of them, have concealed and misrepresented their
28 identities as the entities responsible for their ownership, management, and financial interests.

1 16. Plaintiff is further informed, and believes, and thereon alleges, that at all times
2 mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture,
3 partnership, and common enterprise, and acting within the course and scope of and in pursuance of said
4 joint venture, partnership, and common enterprise. Further, Plaintiff is informed, and believes, and
5 thereon alleges, that all Defendants were joint employers for all purposes of Plaintiff and the other
6 Aggrieved Employees.

7 **IV. COMMON FACTS & ALLEGATIONS**

8 17. Plaintiff and the other Aggrieved Employees (collectively, the “Aggrieved Employees”)
9 are, and were at all relevant times, employed by the Defendants within the State of California.

10 18. The Aggrieved Employees are, and were, at all relevant times, non-exempt employees
11 for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other claims alleged
12 in this complaint.

13 19. Specifically, Plaintiff was employed by Defendants within the statutory PAGA Period,
14 working as an hourly, non-exempt test lab operator for Defendants.

15 **A. MINIMUM WAGE VIOLATIONS**

16 20. Labor Code section 1197 requires employees to be paid at least the minimum wage fixed
17 by the IWC, and any payment of less than the minimum wage is unlawful. Likewise, the Applicable
18 Wage Order also obligates employers to pay each employee minimum wages for all hours worked.
19 (Cal. Code of Regs., tit. 8, § 11040.) Labor Code section 1198 makes unlawful the employment of an
20 employee under conditions that the IWC Wage Orders prohibit.

21 21. These minimum wage standards apply to each hour that employees work. Therefore, an
22 employer’s failure to pay for any particular time worked by an employee is unlawful, even if averaging
23 an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above
24 minimum wage. (*Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.)

25 22. Here, Defendants failed to fully conform their pay practices to the requirements of the
26 law during the relevant statutory periods. The Aggrieved Employees were not compensated for all
27 hours worked including, but not limited to, all hours they were subject to the control of Defendants
28 and/or suffered or permitted to work under the California Labor Code and the Applicable Wage Order.

1 23. Labor Code section 1197.1 authorizes employees who are paid less than the minimum
2 wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty, among other
3 damages, as follows:

4 (1) “For any initial violation that is intentionally committed, one hundred
5 dollars (\$100) for each underpaid employee for each pay period for
6 which the employee is underpaid.”

7 (2) “For each subsequent violation for the same specific offense, two
8 hundred fifty dollars (\$250) for each underpaid employee for each pay
9 period for which the employee is underpaid regardless of whether the
10 initial violation is intentionally committed.” (Lab. Code, § 1197.1, subd.

11 (a).)

12 24. As set forth above, Defendants failed to fully compensate the Aggrieved Employees for
13 all minimum wages. Accordingly, through PAGA and to the extent permitted by law, Plaintiff and the
14 Aggrieved Employees are entitled to recover penalties pursuant to California Labor Code section
15 1197.1 in addition to any other applicable penalties.

16 **B. OVERTIME VIOLATIONS**

17 25. Labor Code section 510 requires employers to compensate employees who work more
18 than eight hours in one workday, forty hours in a workweek, and for the first eight hours worked on
19 the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee.
20 (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates employers to compensate
21 employees at no less than twice the regular rate of pay when an employee works more than twelve
22 hours in a day or more than eight hours on the seventh consecutive day of work. (Lab. Code, § 510,
23 subd. (a).) These rules are also reflected in the Applicable Wage Order.

24 26. In accordance with Labor Code section 1194 and the Applicable Wage Order, the
25 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than the
26 amount provided by Labor Code sections 510 or the Applicable Wage Order.

27 27. Here, Defendants violated their duty to accurately and completely compensate the
28 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked hours

1 that entitled them to overtime compensation under the law but were not fully compensated for those
2 hours.

3 28. Moreover, during the relevant statutory periods, Defendants had a policy and practice
4 of failing to pay overtime wages at the proper rate when it actually paid overtime. Specifically, when
5 Defendants paid overtime wages to the Aggrieved Employees, Defendants failed to include all
6 compensation when calculating the regular rate of pay used in overtime calculations and when paying
7 overtime.

8 29. For instance, the Aggrieved Employees would often receive, along with their hourly
9 rates of pay for their working hours, additional remuneration and/or non-discretionary bonus pay.
10 Defendants, however, calculated the regular rate of pay for the Aggrieved Employees without factoring
11 into the regular rate of pay all other non-hourly pay earnings received during the pay period. As a result,
12 the Aggrieved Employees were underpaid overtime wages when they worked in excess of eight hours
13 in any workday and/or forty hours in a workweek when such additional forms of remuneration were
14 earned. By its practice of periodically requiring the Aggrieved Employees to work in excess of eight
15 hours in a workday and/or forty hours in a workweek without compensating them at the rate of one and
16 one-half (1½) their regular rate of pay, Defendants willfully violated the provisions of Labor Code
17 sections 510, 1194, and 1199.

18 30. These actions were and are in clear violation of California's overtime laws as set forth
19 in Labor Code sections 510, 1194, 1199, and the Applicable Wage Order. (Cal. Code of Regs., tit. 8, §
20 11040.) As a result of Defendants' faulty policies and practices, the Aggrieved Employees were not
21 compensated for all hours worked or paid accurate overtime compensation.

22 C. REST BREAK VIOLATIONS

23 31. Pursuant to Labor Code section 226.7 and the Applicable Wage Order, Defendants were
24 and are required to provide the Aggrieved Employees with compensated, duty-free rest periods of not
25 less than ten minutes for every major fraction of four hours worked. Under the Applicable Wage Order,
26 an employer must authorize and permit all employees to take ten minute duty free rest periods for every
27 major fraction of four hours worked. (Cal. Code of Regs., tit. 8, § 11040.)
28

1 32. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require an
2 employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute,
3 or applicable regulation, standard, or order of the Industrial Welfare Commission” (Lab. Code, §
4 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay their employees one
5 additional hour of pay at the employee’s regular rate for each workday that a “meal or rest or recovery
6 period is not provided.” (Lab. Code, § 226.7, subd. (c).) The “regular rate” for these purposes must
7 factor in all nondiscretionary payments for work performed by the employee, including non-
8 discretionary bonuses, commissions, and other forms of wage payments exceeding the employees’ base
9 hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858, 878.) Thus, the Wage
10 Orders set when and for how long the rest period must take place and the Labor Code establishes that
11 violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer must pay
12 their employees when employers fail to provide rest periods.

13 33. The California Supreme Court has held that, during required rest periods, “employers
14 must relieve their employees of all duties and relinquish any control over how employees spend their
15 break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 260.) Relinquishing
16 control over employees during rest periods requires that employees be “free to leave the employer’s
17 premises” and be “permitted to attend to personal business.” (*Id.* at p. 275.) The *Brinker* Court
18 explained in the context of rest breaks that employer liability attaches from adopting an unlawful
19 policy:

20 “An employer is required to authorize and permit the amount of rest break time
21 called for under the wage order for its industry. If it does not—if, for example,
22 it adopts a uniform policy authorizing and permitting only one rest break for
23 employees working a seven-hour shift when two are required—it has violated
24 the wage order and is liable.” (*Brinker Rest. Corp. v. Superior Court* (2012) 53
25 Cal.4th 1004, 1033.)

26 34. Here, Defendants periodically did not permit the Aggrieved Employees to take
27 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section
28 226.7, the Applicable Wage Order, and applicable precedent. (See *Augustus v. ABM Security Services*,

1 *Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must relieve employees
2 of all duties and relinquish control over how employees spend their time.”].) At all relevant times, the
3 Aggrieved Employees were periodically not provided with legally-compliant and timely rest periods
4 of at least ten minutes for each four hour work period, or major fraction thereof due to Defendants’
5 unlawful rest period policies/practices. The Aggrieved Employees were often expected and required to
6 continue working through rest periods to meet the expectations Defendants and finish the workday. In
7 some cases when the Aggrieved Employees worked more than ten hours in a shift, Defendants failed
8 to authorize and/or permit a third mandated rest period. As a result, the Aggrieved Employees were
9 periodically unable to take compliant rest periods.

10 35. In such cases where Defendants did not offer the Aggrieved Employees the opportunity
11 to receive a compliant off-duty rest period, “the court may not conclude employees voluntarily chose
12 to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410
13 (2015) [“If an employer fails to provide legally compliant meal or rest breaks, the court may not
14 conclude employees voluntarily chose to skip those breaks.”]; *Brinker Rest. Corp. v. Superior Court*,
15 *supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a rest break that was required by law
16 but never authorized; if a break is not authorized, an employee has no opportunity to decline to take
17 it.”].)

18 36. In addition to failing to authorize and permit compliant rest periods, the Aggrieved
19 Employees were not compensated with one hour’s worth of pay at their regular rate of compensation
20 when they were not provided with a compliant rest period in accordance with Labor Code section
21 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7 and the Applicable
22 Wage Order.

23 **D. MEAL BREAK VIOLATIONS**

24 37. Labor Code section 512 and the Applicable Wage Order require employers to provide
25 employees with a thirty-minute uninterrupted and duty-free meal period within the first five hours of
26 work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for a work period of
27 more than five hours per day without providing the employee with a meal period of not less than 30
28 minutes”]; Cal. Code of Regs., tit. 8, § 11040 [“No employer shall employ any person for a work

1 period of more than five (5) hours without a meal period of not less than 30 minutes”].)
2 Additionally, an employee who works more than ten hours per day is entitled to receive a second thirty-
3 minute uninterrupted and duty-free meal period. (Lab. Code, § 512, subd. (a) [“An employer shall not
4 employ an employee for a work period of more than 10 hours per day without providing the employee
5 with a second meal period of not less than 30 minutes”].)

6 38. “An on-duty meal period is permitted only when the nature of the work prevents an
7 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
8 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement must
9 include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the California
10 Department of Industrial Relations, Division of Labor Standards Enforcement (“DLSE”) and courts
11 have “found that the nature of the work exception applies: (1) where the work has some particular
12 external force that requires the employee to be on duty at all times, and (2) where the employee is the
13 sole employee of a particular employer.” (*Id.* at p. 945, internal quotation marks omitted; *Abdullah v.*
14 *U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation
15 to determine whether the nature of the work prevents an employee from being relieved before requiring
16 an employee to take an on-duty meal period.” (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at
17 p. 946.)

18 39. Here, the Aggrieved Employees were never asked to sign any enforceable document
19 agreeing to an on-duty meal period. Moreover, nothing in the nature of their work involved the kind of
20 “external force” that might justify on-duty meal breaks. (*Lubin v. The Wackenhut Corp.*, *supra*, 5
21 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not provide compliant off-duty meal
22 periods within the first five hours of work for the Aggrieved Employees.

23 40. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
24 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal period’s
25 duty-free nature its defining characteristic.”].) Relinquishing control over employees during meal
26 periods requires that employees be “free to leave the employer’s premises” and be “permitted to attend
27 to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2 Cal.5th at p. 275.) Under
28 Labor Code section 512, if an employer maintains a uniform policy that does not authorize and permit

1 the amount of meal time called for under the law (as specified in the Labor Code and/or applicable
2 IWC Wage Order), “it has violated the wage order and is liable.” (*Brinker Restaurant Corp. v. Superior*
3 *Court, supra*, 53 Cal.4th at p. 1033.)

4 41. During the applicable statutory periods here, the Aggrieved Employees were
5 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes due to
6 Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform meal period
7 policies and practices, the Aggrieved Employees were often not permitted to take compliant first meal
8 periods before the end of the fifth hour of work. The Aggrieved Employees were also periodically not
9 permitted to take second meal periods for shifts in excess of ten hours. Defendants thus violated Labor
10 Code section 512 and the Applicable Wage Order by failing to advise, authorize, or permit the
11 Aggrieved Employees to receive thirty-minute, off-duty meal periods within the first five hours of their
12 shifts.

13 42. Labor Code section 226.7 provides that “[a]n employer shall not require an employee
14 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
15 applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab. Code, § 226.7,
16 subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage Order further obligate
17 employers to pay employees one additional hour of pay at the employee’s regular rate of compensation
18 for each workday that the meal period is not provided. (Lab. Code, § 226.7, subd. (c); Cal. Code of
19 Regs., tit. 8, § 11040 [“If an employer fails to provide an employee a meal period in accordance with
20 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
21 employee’s regular rate of compensation for each workday that the meal period is not provided.”].)
22 The “regular rate” for these purposes must factor in all nondiscretionary payments for work performed
23 by the employee, including non-discretionary bonuses, commissions, and other forms of wage
24 payments exceeding the employees’ base hourly rate. (*Ferra v. Loews Hollywood Hotel, LLC* (2021)
25 11 Cal.5th 858, 878.)

26 43. Accordingly, for each day that the Aggrieved Employees did not receive compliant meal
27 periods, they were and are entitled to receive meal period premiums pursuant to Labor Code section
28 226.7 and the Applicable Wage Order. Defendants, however, failed to pay the Aggrieved Employees

1 applicable meal period premiums for many workdays that the employees did not receive a compliant
2 meal period. Thus, Defendants have violated Labor Code section 226.7 and the Applicable Wage
3 Order.

4 **E. UNTIMELY WAGES DURING EMPLOYMENT**

5 44. Labor Code section 204 expressly requires employers who pay employees on a weekly,
6 biweekly, or semimonthly basis to pay all wages “not more than seven calendar days following the
7 close of the payroll period.” Labor Code section 210, subdivision (a), makes employers who violate
8 Labor Code section 204 subject to a penalty of:

9 “(1) For any initial violation, one hundred dollars (\$100) for each failure to
10 pay each employee.

11 “(2) For each subsequent violation, or any willful or intentional violation, two
12 hundred dollars (\$200) for each failure to pay each employee, plus 25
13 percent of the amount unlawfully withheld.” (Lab. Code, § 210, subd.
14 (a).)

15 45. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
16 entirely independent and apart from, any other penalty provided in this article” (Lab. Code, § 210,
17 subd. (a).)

18 46. Due to Defendants’ failure to pay the Aggrieved Employees the wages described above,
19 along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved Employees
20 within seven calendar days following the close of payroll in accordance with Labor Code section 204
21 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D. Cal., May 2, 2016, No.
22 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS 58299 [finding that a failure
23 to pay rest period premiums can support claims under Labor Code sections 203 and 204].)

24 **F. UNTIMELY WAGES AT SEPARATION**

25 47. Labor Code section 203 provides “if an employer willfully fails to pay . . . any wages
26 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty”
27 for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487, 492.) As a result
28

1 of Defendants' failure to pay the Aggrieved Employees for the wages described above, along with rest
2 and meal break premiums, Defendants violated and continue to violate Labor Code section 203.

3 48. Due to Defendants' faulty pay policies, those Aggrieved Employees whose employment
4 with Defendants concluded were not compensated for each and every hour worked at the appropriate
5 rate. Defendants have failed to pay formerly-employed Aggrieved Employees whose sums were certain
6 at the time of termination within at least seventy-two hours of their resignation and have failed to pay
7 those sums for thirty days thereafter.

8 **G. WAGE STATEMENT VIOLATIONS**

9 49. Defendants also failed to provide accurate itemized wage statements in accordance with
10 Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226, subdivision
11 (a), obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage
12 statement in writing showing:

- 13 (1) The gross wages earned;
- 14 (2) The total hours worked by the employee;
- 15 (3) The number of piece-rate units earned and any applicable piece rate if
16 the employee is paid on a piece rate basis;
- 17 (4) All deductions, provided that all deductions made on written orders of
18 the employee may be aggregated and shown as one item;
- 19 (5) The net wages earned;
- 20 (6) The inclusive dates of the period for which the employee is paid;
- 21 (7) The name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number;
- 24 (8) The name and address of the legal entity that is the employer; and
- 25 (9) All applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the
27 employee.
28

1 50. Due to Defendants’ failure to pay the Aggrieved Employees properly as described
2 above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours
3 worked, or the net wages earned, or the applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate. Thus, Defendants have violated Labor
5 Code section 226, subdivisions (a)(1), (2), (5), and (9).

6 51. Defendants also failed to include the accrued sick hours on the wage statements
7 provided to the Aggrieved Employees as required by Labor Code section 246, subdivision (i).

8 52. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and
9 intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in
10 violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing
11 the Aggrieved Employees with wage statements required by California law but nevertheless failed to
12 correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d
13 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226
14 because the “[d]efendant knew that it was not providing total hours worked to plaintiff or other
15 employees paid on commission” even though it believed that employees paid solely on commission or
16 commission and salary “are exempt and therefore we do not record hours on a wage statement.”].)

17 **H. RECORDKEEPING VIOLATIONS**

18 53. Labor Code section 226, subdivision (a), requires employers to keep an accurate record
19 of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent
20 part, as follows:

21 “Any employer who violates subdivision (a) of Section 226 shall be subject to a
22 civil penalty in the amount of two hundred fifty dollars (\$250) per employee per
23 violation in an initial citation and one thousand dollars (\$1,000) per employee
24 for each violation in a subsequent citation, for which the employer fails to
25 provide the employee a wage deduction statement or fails to keep the records
26 required in subdivision (a) of Section 226. The civil penalties provided for in
27
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1 this section are in addition to any other penalty provided by law.” (Lab. Code, §
2 226.3, emphasis added.)

3 54. Likewise, Labor Code section 1174, subdivision (d), requires every employer, including
4 Defendants, to:

5 “Keep, at a central location in the state or at the plants or establishments at which
6 employees are employed, payroll records showing the hours worked daily by
7 and the wages paid to, and the number of piece-rate units earned by and any
8 applicable piece rate paid to, employees employed at the respective plants or
9 establishments. These records shall be kept in accordance with rules established
10 for this purpose by the commission, but in any case shall be kept on file for not
11 less than three years. An employer shall not prohibit an employee from
12 maintaining a personal record of hours worked, or, if paid on a piece-rate basis,
13 piece-rate units earned.” (Lab. Code, § 1174, subd. (d), emphasis added.)

14 55. As explained in detail above, Defendants failed to provide the Aggrieved Employees
15 with accurate itemized wage statements. Defendants did so, in part, because they failed to accurately
16 track hours worked by the Aggrieved Employees. Defendants have thus failed to keep accurate records
17 of the “total hours worked by the employee[s]” in violation of Labor Code section 226, subdivision (a),
18 and are therefore subject to the penalties provided by Labor Code section 226.3. These penalties are
19 “in addition to any other penalty provided by law.” (Lab. Code, § 226.3.)

20 56. The failure to accurately track hours worked also resulted in a failure of Defendants to
21 keep a record of all “payroll records showing the hours worked daily by” Defendants’ employees,
22 including Plaintiff, in violation of Labor Code section 1174, subdivision (d).

23 **I. SICK PAY VIOLATIONS**

24 57. Labor Code section 246 provides that every employee who works in California for the
25 same employer for 30 or more days within a year from the commencement of employment is entitled
26 to paid sick days. (Lab. Code, § 246, subd. (a).) These paid sick days generally accrue at a rate of not
27 less than one hour per every 30 hours worked, and must be paid out using the employees’ regular rate
28 of pay. (Lab. Code, § 246, subds. (b), (l).) The “regular rate of pay” for these purposes must factor in

1 all nondiscretionary payments for work performed by the employee, including non-discretionary
2 bonuses, commissions, and other forms of wage payments exceeding the employees' base hourly rate.
3 (Lab. Code, § 246, subds. (1)(1), (2); see, e.g., *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th
4 858, 878.)

5 58. Here, Defendants employed the Aggrieved Employees for 30 or more days within a year
6 from the commencement of employment. Defendants nevertheless failed to fully pay the Aggrieved
7 Employees for all sick pay that was lawfully earned and accrued.

8 59. By failing to fully pay accrued sick time, Defendants have underpaid the Aggrieved
9 Employees and have violated California Labor Code provisions including, but not limited to, section
10 246.

11 **V. EXHAUSTION OF REMEDIES**

12 60. Plaintiff has fully and completely exhausted administrative remedies under PAGA prior
13 to proceeding with the PAGA claims stated in this complaint. Plaintiff filed a PAGA notice online with
14 the Labor Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants
15 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by PAGA.
16 (Lab. Code, §§ 2698–2699.6.)

17 61. As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by
18 regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was received by
19 Plaintiff from the LWDA evidencing its intention to investigate within sixty-five calendar days of the
20 postmark date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
21 action pursuant to Labor Code section 2699.

22 **VI. CAUSES OF ACTION**

23 **First Cause of Action**

24 *Penalties Pursuant to PAGA for Violations of Labor Code Sections 201, 202, 203,*
25 *204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1,*
26 *1198, 1198.5, 1199, and Other Provisions of the California Labor Code*
27 *(Against All Defendants)*

28 62. Plaintiff realleges and incorporates by reference all previous paragraphs.

1 63. Based on the above allegations incorporated by reference, Defendants violated Labor
2 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2,
3 1197, 1197.1, 1198, 1198.5, 1199, and others that may be applicable; and the Applicable Wage Order
4 (Cal. Code of Regs., tit. 8, § 11040), and others that may be applicable.

5 64. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code sections
6 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202, 203, 204, 210,
7 226, 226.3, 226.7, 246, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, and
8 others that may be applicable; and the Applicable Wage Order (Cal. Code of Regs., tit. 8, § 11040),
9 and others that may be applicable.

10 65. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such violation,
11 Plaintiff and the Aggrieved Employees are entitled to penalties in an amount to be shown at the time
12 of trial subject to the following formula:

- 13 A. \$100 for the initial violation per employee per pay period; and
14 B. \$200 for each subsequent violation per employee per pay period.

15 66. These penalties must be allocated seventy-five percent to the Labor and Workforce
16 Development Agency ("LWDA") and twenty-five percent to the affected employees. These penalties
17 may be stacked separately for each of Defendants violations of the California Labor Code. (*Lopez v.*
18 *Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with approval *Stoddart v.*
19 *Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM) 2015 WL 5522142, at *9,
20 for the proposition that plaintiff could pursue separate claims for penalties under Labor Code section
21 226, subdivision (e), and penalties for Labor Code section 226, subdivision (a), violations]; see also
22 *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012, No. CV 12-02972 MMM JCGX) 2012 WL
23 2373372, at *17 fn. 70 [noting that federal courts applying California law have found that "PAGA
24 penalties can be stacked, i.e., multiple PAGA penalties can be assessed for the same pay period for
25 different Labor Code violations."], internal quotation marks omitted).

26 67. In addition, to the extent permitted by law, Defendants failed to provide Plaintiff and all
27 Aggrieved Employees with accurate itemized wage statements in compliance with Labor Code section
28 226, subdivision (a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code

1 section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates, LLC, supra*, 15 Cal.App.5th at pp.
2 780, 788.)

3 68. For violations of Labor Code section 226, subdivision (a), Plaintiff seeks the default
4 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
5 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount
6 of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
7 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails
8 to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of
9 Section 226.” Accordingly, through PAGA and to the extent permitted by law Plaintiff and the
10 Aggrieved Employees are entitled to recover penalties for violations of Labor Code section 226.3 and
11 seeks default PAGA penalties for each of Defendants’ numerous violations of Labor Code section 226,
12 subdivision (e).

13 69. Labor Code section 210 provides that “in addition to, an entirely independent and apart
14 from, any other penalty provided in this article, every person who fails to pay the wages of each
15 employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows: (1) For any
16 initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For each
17 subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure
18 to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty
19 compensation policies and practices, Plaintiff and the Aggrieved Employees are also entitled to recover
20 penalties under Labor Code section 210 through PAGA.

21 70. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
22 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that is
23 intentionally committed for each underpaid employee for each pay period for which the employee is
24 underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for the same specific
25 offense for each underpaid employee for each pay period for which the employee is underpaid
26 regardless of whether the initial violation is intentionally committed. Accordingly, through PAGA and
27 to the extent permitted by law, Plaintiff and the Aggrieved Employees are entitled to recover pursuant
28 to Labor Code section 1197.1.

1 71. Plaintiff was compelled to retain the services of counsel to file this action to protect her
2 interests and those of the Aggrieved Employees, and to assess and collect the wages and penalties owed
3 by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which Plaintiff is also entitled
4 to recover under Labor Code section 2699, subdivision (g)(1).

5 **VII. PRAYER FOR RELIEF**

6 Plaintiff prays for judgment for herself and for all others on whose behalf this suit is brought
7 against Defendants, as follows:

- 8 1. For the failure to maintain accurate employment records, penalties pursuant to Labor
9 Code sections 226.3, 1174.5, and others that may be applicable;
 - 10 2. For the failure to pay all sick time wages due and owed, compensatory, consequential,
11 general, and special damages according to proof pursuant to Labor Code section 246,
12 and others as may be applicable;
 - 13 3. For the violations of California's Unfair Competition Law, restitution to Plaintiff of all
14 money and/or property unlawfully acquired by Defendants by means of any acts or
15 practices declared by this Court to be in violation of Business and Professions Code
16 sections 17200 through 17210;
 - 17 4. For the claim of penalties pursuant to PAGA and other provisions of the California
18 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200 for
19 each subsequent violation as specified in Labor Code section 2699, subdivision (f)(2),
20 in the representative action brought on behalf of Plaintiff and the Aggrieved Employees
21 pursuant the Labor Code Private Attorneys General Act of 2004, and for civil penalties
22 available under Labor Code section 210;
 - 23 5. Prejudgment interest on all due and unpaid wages pursuant to Labor Code section 218.6
24 and Civil Code sections 3287 and 3289;
 - 25 6. On all causes of action for which attorneys' fees may be available, for attorneys' fees
26 and costs as provided by Labor Code sections 218.5, 226, Code of Civil Procedure
27 section 1021.5, and others as may be applicable;
- 28

1 7. For an order enjoining Defendants, and each of them, and their agents, servants, and
2 employees, and all persons acting under, in concert with, or for them, from acting in
3 derogation of any rights or duties adumbrated in this complaint; and

4 8. For such other and further relief, this Court may deem just and proper.

5
6 Dated: February 26, 2025

MELMED LAW GROUP P.C.



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Employees