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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF LOS ANGELES

ANETA GORNICKA, an individual, and on
behalf of the State of California, as a private
attorney general,

Plaintiff,

vs.

FORTUNA ENTERPRISES, L.P., a Limited
Partnership; and DOES 1 through 50, inclusive,

DEFENDANT.

Case No. **24TRCV03229**

COMPLAINT FOR:

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
218, 221, 226(a), 226.7, 227.3, 246 *et*
seq., 510, 512, 558(a)(1)(2), 1194, 1197,
1197.1, 1198, 2802, California Code of
Regulations, Title 8, Section 11040,
Subdivision 5(A)-(B), California Code of
Regulations, Title 8, Section 11070(14)
(Failure to Provide Seating), and Violation
of Applicable Industrial Welfare
Commission Wage Order(s);

2. Discrimination and Retaliation in
Violation of FEHA; and,

3. Retaliation in Violation of Labor Code
§ 1102.5, *et seq.*

DEMAND FOR A JURY TRIAL

1 Aneta Gornicka (“PLAINTIFF”), on behalf of the people of the State of California and as an
2 “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorney
3 General Act of 2004, § 2699, *et seq.* (“PAGA”) with regard to the First Cause of Action, and as an
4 individual with regard to the Second and Third Causes of Action, alleges on information and belief,
5 except for her own acts and knowledge which are based on personal knowledge, the following:

6 INTRODUCTION

7 1. PLAINTIFF brings the First Cause of Action against Defendant Fortuna Enterprises, L.P.
8 (referred to as “DEFENDANT”) seeking only to recover PAGA civil penalties on behalf of all current
9 and former aggrieved employees that worked for DEFENDANT. PLAINTIFF does **not seek to recover**
10 **anything other than penalties as permitted by California Labor Code § 2699.** To the extent that
11 statutory violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
12 and/or special damages for those violations, but simply the civil penalties permitted by California Labor
13 Code § 2699.

14 2. California has enacted the PAGA which permits PLAINTIFF to bring an action
15 on behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
16 nature of this action.

17 3. Accordingly, as to the First Cause of Action, PLAINTIFF seeks to obtain all applicable
18 relief for DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
19 is, penalties and any other relief the Court deems proper pursuant to the PAGA.

20 4. As to the First Cause of Action, PLAINTIFF is not suing in her individual capacity,
21 she is proceeding solely under the PAGA, on behalf of the State of California for all aggrieved
22 employees, including herself and other aggrieved employees. With regard to the First Cause of
23 Action, nothing in this complaint should be construed as PLAINTIFF suing in her individual
24 capacity.

25 5. PLAINTIFF brings the Second and Third Causes of Action individually against
26 DEFENDANT for economic, non-economic, compensatory, punitive damages, pre-judgment interest,
27 costs and reasonable attorneys’ fees as set forth below.

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THE PARTIES

6. Fortuna Enterprises, L.P. ("DEFENDANT") is a limited partnership that at all relevant times mentioned herein conducted and continues to conduct substantial business in California.

7. DEFENDANT owns and operates hotels in California.

8. PLAINTIFF is currently employed by DEFENDANT in California. PLAINTIFF's employment started in January of 2023. PLAINTIFF has been at all times classified by DEFENDANT as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked.

9. PLAINTIFF, and such persons that may be added from time to time who satisfy the requirements and exhaust the administrative procedures under the Private Attorney General Act, brings this Representative Action on behalf of the State of California with respect to herself and all individuals who are or previously were employed by DEFENDANT in California, including any employees staffed with DEFENDANT by a third party, and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during the time period of April 4, 2023 until a date as determined by the Court (the "PAGA PERIOD").

10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and the applicable Wage Order(s). Based upon the foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

11. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate or otherwise of DEFENDANT DOES 1 through 50, inclusive, are presently unknown to

1 PLAINTIFF who therefore sues these DEFENDANT by such fictitious names pursuant to Cal. Civ.
2 Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege the true names and
3 capacities of Does 1 through 50, inclusive, when they are ascertained. PLAINTIFF is informed and
4 believes, and based upon that information and belief alleges, that the DEFENDANT named in this
5 Complaint, including DOES 1 through 50, inclusive, are responsible in some manner for one or more
6 of the events and happenings that proximately caused the injuries and damages hereinafter alleged.

7 12. The agents, servants and/or employees of the DEFENDANT and each of them acting
8 on behalf of the DEFENDANT acted within the course and scope of his, her or its authority as the
9 agent, servant and/or employee of the DEFENDANT, and personally participated in the conduct
10 alleged herein on behalf of the DEFENDANT with respect to the conduct alleged herein.
11 Consequently, the acts of each Defendant are legally attributable to the other DEFENDANT and all
12 DEFENDANT are jointly and severally liable to PLAINTIFF and all the AGGRIEVED EMPLOYEES,
13 for the loss sustained as a proximate result of the conduct of the DEFENDANT's agents, servants
14 and/or employees.

15 **THE CONDUCT**

16 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
17 required to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all their time worked, meaning
18 the time during which an employee is subject to the control of an employer, including all the time the
19 employee is suffered or permitted to work. DEFENDANT requires PLAINTIFF and the AGGRIEVED
20 EMPLOYEES to work without paying them for all the time they are under DEFENDANT's control.
21 Among other things, DEFENDANT requires PLAINTIFF to work while clocked out during what is
22 supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF was from time to time interrupted by
23 work assignments while clocked out for what should have been PLAINTIFF's off-duty meal break.
24 DEFENDANT, as a matter of established company policy and procedure, administers a uniform
25 practice of rounding the actual time worked and recorded by PLAINTIFF and the AGGRIEVED
26 EMPLOYEES, always to the benefit of DEFENDANT, so that during the course of their employment,
27 PLAINTIFF and the AGGRIEVED EMPLOYEES are paid less than they would have been paid had
28 they been paid for actual recorded time rather than "rounded" time. Additionally, DEFENDANT

engages in the practice of requiring PLAINTIFF and the AGGRIEVED EMPLOYEES to perform work off the clock in that DEFENDANT, as a condition of employment, required these employees to submit to mandatory temperature checks and symptom questionnaires for COVID-19 screening prior to clocking into DEFENDANT's timekeeping system for the workday. As a result, PLAINTIFF and the AGGRIEVED EMPLOYEES forfeit minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time being correctly recorded and without compensation at the applicable rates. DEFENDANT's policy and practice not to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

14. State law provides that employees must be paid overtime and meal and rest break premiums at one-and-one-half times their "regular rate of pay." PLAINTIFF and the AGGRIEVED EMPLOYEES are compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee's performance.

15. The second component of PLAINTIFF's and the AGGRIEVED EMPLOYEES' compensation is DEFENDANT's non-discretionary incentive program that paid PLAINTIFF and the AGGRIEVED EMPLOYEES incentive wages based on their performance for DEFENDANT. The non-discretionary incentive program provided all employees paid on an hourly basis with incentive compensation when the employees met the various performance goals set by DEFENDANT. However, when calculating the regular rate of pay in order to pay overtime and meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES, DEFENDANT failed to include the incentive compensation as part of the employees' "regular rate of pay" for purposes of calculating overtime pay and meal and rest break premium pay. Management and supervisors described the incentive program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by PLAINTIFF and the AGGRIEVED EMPLOYEES must be included in the "regular rate of pay." The failure to do so has resulted in a underpayment of overtime compensation and meal and rest break premiums to PLAINTIFF and the AGGRIEVED EMPLOYEES by DEFENDANT.

16. As a result of their rigorous work schedules, PLAINTIFF and the AGGRIEVED EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks and were

1 not fully relieved of duty for their meal periods. PLAINTIFF and the AGGRIEVED EMPLOYEES
2 were required from time to time to perform work as ordered by DEFENDANT for more than five (5)
3 hours during some shifts without receiving a meal break. Further, DEFENDANT from time to time
4 failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with a second off-duty meal period
5 for some workdays in which these employees were required by DEFENDANT to work ten (10) hours
6 of work. DEFENDANT also engaged in the practice of rounding the meal period times to avoid paying
7 penalties to PLAINTIFF and the AGGRIEVED EMPLOYEES. PLAINTIFF and the AGGRIEVED
8 EMPLOYEES therefore forfeit meal breaks without additional compensation and in accordance with
9 DEFENDANT's corporate policy and practice.

10 17. During the PAGA PERIOD, PLAINTIFF and the AGGRIEVED EMPLOYEES were
11 also required from time to time to work in excess of four (4) hours without being provided ten (10)
12 minute rest periods. Further, these employees were denied their first rest periods of at least ten (10)
13 minutes for some shifts worked of at least two (2) to four (4) hours from time to time, a first and
14 second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8)
15 hours from time to time, and a first, second and third rest period of at least ten (10) minutes for some
16 shifts worked of ten (10) hours or more from time to time. PLAINTIFF and the AGGRIEVED
17 EMPLOYEES were also not provided with one hour wages in lieu thereof. Additionally, the
18 applicable California Wage Order requires employers to provide employees with off-duty rest periods,
19 which the California Supreme Court defined as time during which an employee is relieved from all
20 work related duties and free from employer control. In so doing, the Court held that the requirement
21 under California law that employers authorize and permit all employees to take rest period means that
22 employers must relieve employees of all duties and relinquish control over how employees spend their
23 time which includes control over the locations where employees may take their rest period. Employers
24 cannot impose controls that prohibit an employee from taking a brief walk - five minutes out, five
25 minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and the AGGRIEVED
26 EMPLOYEES from unconstrained walks and is unlawful based on DEFENDANT's rule which states
27 PLAINTIFF and the AGGRIEVED EMPLOYEES cannot leave the work premises during their rest
28 period.

1 18. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
2 PLAINTIFF and the AGGRIEVED EMPLOYEES for the actual amount of time these employees
3 worked. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was required
4 to pay PLAINTIFF and the AGGRIEVED EMPLOYEES for all time worked, meaning the time during
5 which an employee was subject to the control of an employer, including all the time the employee was
6 permitted or suffered to permit this work. DEFENDANT required these employees to work off the
7 clock without paying them for all the time they were under DEFENDANT's control. As such,
8 DEFENDANT knew or should have known that PLAINTIFF and the AGGRIEVED EMPLOYEES
9 were under compensated for all time worked. As a result, PLAINTIFF and the AGGRIEVED
10 EMPLOYEES forfeited time worked by working without their time being accurately recorded and
11 without compensation at the applicable minimum wage and overtime wage rates. To the extent that
12 the time worked off the clock does not qualify for overtime premium payment, DEFENDANT failed
13 to pay minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197,
14 and 1197.1.

15 19. From time to time, DEFENDANT also failed to provide PLAINTIFF and the
16 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to show,
17 among other things, the correct gross and net wages earned. Cal. Lab. Code § 226 provides that every
18 employer shall furnish each of his or her employees with an accurate itemized wage statement in
19 writing showing, among other things, gross wages earned and all applicable hourly rates in effect
20 during the pay period and the corresponding amount of time worked at each hourly rate. PLAINTIFF
21 and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements
22 should reflect all applicable hourly rates during the pay period and the total hours worked, and the
23 applicable pay period in which the wages were earned pursuant to California Labor Code Section
24 226(a). The wage statements DEFENDANT provided to PLAINTIFF and the AGGRIEVED
25 EMPLOYEES failed to identify such information. More specifically, the wage statements failed to
26 identify the accurate total hours worked each pay period. When the hours shown on the wage
27 statements were added up, they did not equal the actual total hours worked during the pay period in
28 violation of Cal. Lab. Code 226(a)(2). Aside, from the violations listed above in this paragraph,

1 DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all the requirements
2 under California Labor Code 226 *et seq.* As a result, DEFENDANT from time to time provided
3 PLAINTIFF and the AGGRIEVED EMPLOYEES with wage statements which violated Cal. Lab.
4 Code § 226.

5 20. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be
6 deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the
7 wages are paid not more than seven (7) calendar days following the close of the payroll period.
8 Cal. Lab. Code § 210 provides:

9 [I]n addition to, and entirely independent and apart from, any other penalty provided in
10 this article, every person who fails to pay the wages of each employee as provided in
11 Sections. . . .204. . .shall be subject to a civil penalty as follows: (1) For any initial
12 violation, one hundred dollars (\$100) for each failure to pay each employee; (2) For
each subsequent violation, or any willful or intentional violation, two hundred dollars
(\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
withheld.

13 21. DEFENDANT from time to time failed to pay PLAINTIFF and the AGGRIEVED
14 EMPLOYEES within seven (7) days of the close of the payroll period in accordance with Cal. Lab.
15 Code § 204(d), including but not limited to for the “Hourly” regular wage payments.

16 22. DEFENDANT underpaid sick pay wages to PLAINTIFF and the AGGRIEVED
17 EMPLOYEES by failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code
18 Section 246. Specifically, PLAINTIFF and other non-exempt employees earn non-discretionary
19 remuneration, including, but not limited to, incentives, shift differential pay, and bonuses. Rather than
20 pay sick pay at the regular rate of pay, DEFENDANT underpays sick pay to PLAINTIFF and the
21 AGGRIEVED EMPLOYEES at their base rates of pay.

22 23. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for nonexempt
23 employees be calculated by dividing the employee’s total wages, not including overtime premium pay,
24 by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.

25 24. DEFENDANT violated Cal. Lab. Code Section 246 by failing to pay sick pay at the
26 regular rate of pay. PLAINTIFF and the AGGRIEVED EMPLOYEES routinely earned non-
27 discretionary incentive wages which increased their regular rate of pay. However, when sick pay was
28

1 paid, it was paid at the base rate of pay for PLAINTIFF and the AGGRIEVED EMPLOYEES, as
2 opposed to the correct, higher regular rate of pay, as required under Cal. Lab. Code Section 246.

3 25. As a pattern and practice, DEFENDANT regularly failed to pay PLAINTIFF and the
4 AGGRIEVED EMPLOYEES their correct wages and accordingly owe waiting time penalties pursuant
5 to Cal. Lab. Code Section 203. Further, PLAINTIFF is informed and believes and based thereon alleges
6 that such failure to pay sick pay at regular rate was willful, such that the AGGRIEVED EMPLOYEES
7 whose employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code
8 Sections 201-203.

9 26. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
10 collect or receive from an employee any part of wages theretofore paid by said employer to said
11 employee." DEFENDANT failed to pay all compensation due to PLAINTIFF and the AGGRIEVED
12 EMPLOYEES, made unlawful deductions from compensation payable to PLAINTIFF and the
13 AGGRIEVED EMPLOYEES, failed to disclose all aspects of the deductions from compensation
14 payable to PLAINTIFF and the AGGRIEVED EMPLOYEES, and thereby failed to pay these
15 employees all wages due at each applicable pay period and upon termination.

16 27. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
17 PLAINTIFF and the AGGRIEVED EMPLOYEES for required business expenses incurred by the
18 PLAINTIFF and the AGGRIEVED EMPLOYEES in direct consequence of discharging their duties
19 on behalf of DEFENDANT. Under California Labor Code Section 2802, employers are required to
20 indemnify employees for all expenses incurred in the course and scope of their employment. Cal. Lab.
21 Code § 2802 expressly states that "an employer shall indemnify his or her employee for all necessary
22 expenditures or losses incurred by the employee in direct consequence of the discharge of his or her
23 duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the
24 employee, at the time of obeying the directions, believed them to be unlawful."

25 28. In the course of their employment PLAINTIFF and the AGGRIEVED EMPLOYEES
26 as a business expense, were required by DEFENDANT to use their own personal cellular phones as
27 a result of and in furtherance of their job duties as employees for DEFENDANT but are not reimbursed
28 or indemnified by DEFENDANT for the cost associated with the use of their personal cellular phones

1 for DEFENDANT's benefit. Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were
2 required by DEFENDANT to use their personal cellular phones. As a result, in the course of their
3 employment with DEFENDANT, PLAINTIFF and the AGGRIEVED EMPLOYEES incurred
4 unreimbursed business expenses which included, but were not limited to, costs related to the use of
5 their personal cellular phones all on behalf of and for the benefit of DEFENDANT.

6 29. In violation of the applicable sections of the California Labor Code and the requirements
7 of the applicable Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT as a matter of
8 company policy, practice and procedure, intentionally, knowingly and systematically failed to provide
9 PLAINTIFF and the other AGGRIEVED EMPLOYEES suitable seating when the nature of these
10 employees' work reasonably permitted sitting.

11 30. DEFENDANT knew or should have known that PLAINTIFF and other AGGRIEVED
12 EMPLOYEES were entitled to suitable seating and/or were entitled to sit when it did not interfere with
13 the performance of their duties, and that DEFENDANT did not provide suitable seating and/or did not
14 allow them to sit when it did not interfere with the performance of their duties.

15 31. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
16 EMPLOYEES, DEFENDANT violated California Labor Code Section 1198 and Wage Order 4-2001,
17 Section 14 by failing to provide suitable seats. PLAINTIFF seeks penalties on behalf of PLAINTIFF
18 and other AGGRIEVED EMPLOYEES as provided herein. Providing suitable seating is the
19 DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of the obligation to meet
20 this burden, DEFENDANT violated the California Labor Code and regulations promulgated thereunder
21 as herein alleged.

22 32. The employment of some AGGRIEVED EMPLOYEES has terminated and
23 DEFENDANT has not tendered payment of all wages owed as required by law. Additionally, at all
24 times during the term of PLAINTIFF's employment with DEFENDANT, AGGRIEVED EMPLOYEES
25 earned and accrued vested vacation and holiday time on the date of their termination pursuant to
26 DEFENDANT's uniform vacation policies and applicable California law. The amount of vacation pay
27 AGGRIEVED EMPLOYEES earned and accumulated is evidenced by DEFENDANT's business
28 records. Additionally, DEFENDANT also underpaid accrued vested vacation wages to AGGRIEVED

1 EMPLOYEES by failing to pay such wages at the regular rate of pay and more specifically the final
2 rate of pay that included all non-discretionary incentive compensation. Rather than pay vacation wages
3 at the regular rate of pay, DEFENDANT underpaid vacation wages to AGGRIEVED EMPLOYEES
4 at their base rates of pay, instead of including all of the AGGRIEVED EMPLOYEES' non-
5 discretionary incentive compensation into the vacation wage payment calculations. DEFENDANT
6 failed to specify in DEFENDANT's written vacation policy the rate at which AGGRIEVED
7 EMPLOYEES would be paid vacation upon leaving employment with DEFENDANT. As a result of
8 DEFENDANT's unlawful practice, policy and procedure to deny paying the AGGRIEVED
9 EMPLOYEES all of their vested vacation and holiday time, DEFENDANT failed to pay AGGRIEVED
10 EMPLOYEES all vested vacation time as wages due upon employment termination, in violation of the
11 California Labor Code, Sections 201, 202, 203 and 227.3. Similarly, DEFENDANT underpaid waiting
12 time penalties to AGGRIEVED EMPLOYEES at their base rates of pay, instead of including all of the
13 AGGRIEVED EMPLOYEES' non-discretionary compensation into the waiting time penalty
14 calculations. This failure by DEFENDANT is believed to be the result of DEFENDANT's unlawful,
15 unfair and deceptive refusal to provide compensation for earned, accrued and vested vacation and
16 holiday time, as well as the corresponding waiting time penalties that were paid. DEFENDANT
17 perpetrated this unlawful, unfair and deceptive practice to the detriment of AGGRIEVED
18 EMPLOYEES. DEFENDANT's uniform practice and policy of failing to pay the AGGRIEVED
19 EMPLOYEES for all vested vacation and holiday time accumulated at employment termination
20 violated and continues to violate Section 227.3 of the California Labor Code.

21 22 **JURISDICTION AND VENUE**

23 33. This Court has jurisdiction over this Action pursuant to California Code of Civil
24 Procedure, Section 410.10.

25 34. Venue is proper in this Court pursuant to California Code of Civil Procedure,
26 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
27 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
28 in this County and/or conducts substantial business in this County, and (ii) committed the

1 wrongful conduct herein alleged in this County against PLAINTIFF and other AGGRIEVED
2 EMPLOYEES.

3 **FIRST CAUSE OF ACTION**

4 **For Violation of the Private Attorneys General Act**

5 **[Cal. Lab. Code §§ 2698, *et seq.*]**

6 **(By PLAINTIFF and Against All DEFENDANT)**

7 35. PLAINTIFF realleges and incorporates by this reference, as though fully set forth herein,
8 the prior paragraphs of this Complaint.

9 36. PAGA is a mechanism by which the State of California itself can enforce state labor
10 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's labor
11 law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
12 enforcement action designed to protect the public and not to benefit private parties. The purpose of
13 the PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as
14 private attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature
15 specified that "it was ... in the public interest to allow aggrieved employees, acting as private attorneys
16 general to recover civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly,
17 PAGA claims cannot be subject to arbitration.

18 37. PLAINTIFF, and such persons that may be added from time to time who satisfy the
19 requirements and exhaust the administrative procedures under the Private Attorney General Act, brings
20 this Representative Action on behalf of the State of California with respect to herself and all
21 individuals who are or previously were employed by DEFENDANT in California, including any
22 employees staffed with DEFENDANT by a third party, and classified as non-exempt employees
23 ("AGGRIEVED EMPLOYEES") during the time period of April 4, 2023 until a date as determined
24 by the Court (the "PAGA PERIOD").

25 38. On April 4, 2024, PLAINTIFF gave written notice by electronic mail to the Labor and
26 Workforce Development Agency (the "Agency") and by certified mail to the employer of the specific
27 provisions of this code alleged to have been violated as required by Labor Code § 2699.3. See **Exhibit**
28 **#1**, attached hereto and incorporated by this reference herein (*PAGA Notice only without draft*

1 *complaint*). The statutory waiting period for PLAINTIFF to add these allegations to the Complaint has
2 expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a representative
3 civil action under PAGA pursuant to Section 2699 as the proxy of the State of California with respect
4 to all AGGRIEVED EMPLOYEES as herein defined.

5 39. The policies, acts and practices heretofore described were and are an unlawful business
6 act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the AGGRIEVED
7 EMPLOYEES accurate itemized wage statements, (b) failed to properly record and provide legally
8 required meal and rest periods, (c) failed to pay minimum wages, (d) failed to pay overtime wages and
9 sick pay wages, (e) failed to reimburse employees for required expenses, (f) failed to provide wages
10 when due, and (g) failed to provide suitable seating, all in violation of the applicable Labor Code
11 sections listed in Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3,
12 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of
13 Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations,
14 Title 8, Section 1 1070(14) (Failure to Provide Seating), and the applicable Wage Order(s), and
15 thereby gives rise to civil penalties as a result of such conduct.¹ PLAINTIFF hereby seeks recovery
16 of civil penalties as prescribed by the Labor Code Private Attorney General Act of 2004 as the
17 representative of the State of California for the illegal conduct perpetrated on PLAINTIFF and the
18 AGGRIEVED EMPLOYEES.

19 40. All of the conduct and violations alleged herein occurred during the PAGA PERIOD.
20 To the extent that any of the conduct and violations alleged herein did not affect PLAINTIFF during
21 the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that affected the AGGRIEVED
22 EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018 AJDAR 12157 (Certified for
23 Publication 12/19/18).

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28 ¹As to the First Cause of Action alleging violations of the PAGA, Plaintiff specifically excludes
and/or does not allege any claims under California Labor Code §558(a)(3).

1 **SECOND CAUSE OF ACTION**

2 **[Disability and/or Leave Discrimination and Retaliation For the Exercise of Rights**
3 **Guaranteed Under the FEHA, Participating in Protected Activities, and/or Opposing**

4 **DEFENDANT's Failure to Provide Such Rights]**

5 **Violation of FEHA Government Section 12900, *et. seq.***

6 **(By PLAINTIFF Against All Defendants)**

7 41. PLAINTIFF realleges and incorporates by reference, as though fully set forth
8 herein, the prior paragraphs of this Complaint.

9 42. In September and October of 2023, PLAINTIFF reported to DEFENDANT in
10 writing that PLAINTIFF needed accommodation and time off from work due to emotional
11 distress and anxiety caused by harassment at her work place. PLAINTIFF went on leave during
12 this time. In or around November of 2023, PLAINTIFF consulted with a doctor again still
13 regarding health issues PLAINTIFF had been experiencing as a result of the hostile and
14 discriminatory workplace she was experiencing and her Dr. Ordered her off work to be
15 evaluated in four weeks. PLAINTIFF adhered to the doctor's orders and stayed on medical
16 leave. PLAINTIFF returned to work with DEFENDANT in 2024, but unfortunately her
17 workplace only worsened and her requests for accommodation and relief fell on deaf ears.
18 DEFENDANT retaliated against PLAINTIFF by, including, but not limited to, reducing her
19 hours and assigning her on undesirable work shifts. DEFENDANT's conduct during the first
20 quarter of 2024 created a hostile and discriminatory workplace for PLAINTIFF. Ultimately,
21 while at work on March 8th, 2024, Plaintiff suffered a serious stroke and went to the emergency
22 room. PLAINTIFF is still recovering from her stroke at the time of filing this complaint.
23 DEFENDANT's conduct is in violation of various fundamental public policies underlying state
24 laws. Specifically, PLAINTIFF was retaliated against in part because of PLAINTIFF's
25 protected status (i.e., disability, medical leave, and/or good faith complaints). These actions
26 were in violation of FEHA, the California Constitution, and California Labor Code Section
27 1102.5. Prior to filing this action PLAINTIFF exhausted her administrative remedies by filing
28 a timely administrative complaint with the Department of Fair Employment and Housing

1 (“DFEH”) and received a DFEH Right to Sue letter on April 4, 2024.

2 43. DEFENDANT’s conduct, as alleged, violated FEHA, Government Code Section
3 12900, *et seq.*, and DEFENDANT committed unlawful employment practices, including the
4 following bases for liability:

5 a. Taking adverse employment actions against PLAINTIFF, including
6 discharging, barring, refusing to transfer, retain, hire, select, and/or employ, and/or otherwise
7 discriminating against PLAINTIFF, in whole or in part on the basis of PLAINTIFF’s
8 disability/medical condition/goof faith complaints;

9 b. Retaliating against PLAINTIFF for seeking to exercise rights guaranteed
10 under FEHA, participating in protected activities, and/or opposing DEFENDANT’s failure to
11 provide such rights.

12 44. As a proximate result of DEFENDANT’s willful, knowing, and intentional
13 discrimination against PLAINTIFF, PLAINTIFF has sustained and continues to sustain
14 substantial losses of earnings and other employment benefits.

15 45. As a proximate result of DEFENDANT’s willful, knowing, and intentional
16 discrimination against PLAINTIFF, PLAINTIFF has suffered and continues to suffer
17 humiliation, emotional distress, and physical and mental pain and anguish, all to his damage
18 in a sum according to proof.

19 46. PLAINTIFF has incurred and continues to incur legal expenses and attorneys’
20 fees. Pursuant to Government Code Section 12965(b), PLAINTIFF is entitled to recover
21 reasonable attorneys’ fees and costs (including expert costs) in an amount according to proof.

22 47. DEFENDANT’s misconduct was committed intentionally, in a malicious,
23 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages against
24 DEFENDANT.

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1 FEHA, the California Constitution, and California Labor Code Section 1102.5. PLAINTIFF
2 raised complaints of illegality while PLAINTIFF worked for DEFENDANT and was
3 believed to be willing to raise complaints, and DEFENDANT retaliated against
4 PLAINTIFF by taking adverse employment action against PLAINTIFF as stated herein.

5 51. As a proximate result of DEFENDANT'S willful, knowing, and intentional
6 violation(s) of Labor Code section 1102.5, PLAINTIFF has suffered and continues to
7 suffer humiliation, emotional distress, and mental and physical pain and anguish, all to
8 PLAINTIFF's damage in a sum according to proof.

9 52. As a result of DEFENDANT'S adverse employment actions against
10 PLAINTIFF, PLAINTIFF has suffered general and special damages in sums according to
11 proof.

12 53. DEFENDANT'S misconduct was committed intentionally, in a malicious,
13 oppressive manner, and fraudulent manner entitling PLAINTIFF to punitive damages
14 against defendants.

15 **PRAYER FOR RELIEF**

16 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
17 severally, as follows:

- 18 1. For the First Cause of Action on behalf of the State of California and with respect
19 to all AGGRIEVED EMPLOYEES:

20 A) Recovery of civil penalties as prescribed by the Labor Code Private
21 Attorneys General Act of 2004; and,

22 B) An award of attorneys' fees and cost of suit, as allowable under the
23 law, including, but not limited to, pursuant to Labor Code §2699;

- 24 2. For the Second and Third Causes of Action on behalf of PLAINTIFF Individually:

25 A) Compensatory damages, according to proof at trial, but in excess of
26 \$25,000.
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- 1 B) Special and General damages according to proof;
2 C) Statutory damages, penalties and attorney's fees;
3 D) For punitive damages in an amount necessary to make an example of
4 and to punish DEFENDANT and deter DEFENDANT from engaging
5 in future similar conduct;
6 E) For loss of earnings (both past and future); and,
7 F) For interest at the legal rate in an amount according to proof.

8 Dated: September 25, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP
9

10 By: /s/ Nicholas De Blouw
11

12 Norman B. Blumenthal
13 Nicholas J. De Blouw

14 **CENTURION TRIAL ATTORNEYS, APC**
15 Ryan A. Stygar (State Bar No. 332764)
16 8880 Rio San Diego Dr Ste 800
17 San Diego, CA 92108
18 *Attorneys for Plaintiff*
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DEMAND FOR A JURY TRIAL

PLAINTIFF demands a jury trial on issues triable to a jury.

Dated: September 25, 2024 BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

By: /s/ Nicholas De Blouw
Norman B. Blumenthal
Nicholas J. De Blouw

CENTURION TRIAL ATTORNEYS, APC
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8880 Rio San Diego Dr Ste 800
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Attorneys for Plaintiff

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EXHIBIT 1

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

2255 CALLE CLARA

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WRITERS E-MAIL:

Nick@bamlawca.com

WRITERS EXT:

1004

April 4, 2024

CA3280

VIA ONLINE FILING TO LWDA AND CERTIFIED MAIL TO DEFENDANT

Labor and Workforce Development Agency
Online Filing

Fortuna Enterprises, L.P.
Certified Mail #9589071052700408543502
1505 Corporation
National Registered Agents, Inc.
AMANDA GARCIA
330 N BRAND BLVD,
GLENDALE, CA 91203

Re: Notice Of Violations Of California Labor Code Sections §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246 *et seq.*, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s), brought Pursuant To California Labor Code Section 2699.5.

Dear Sir/Madam:

“Aggrieved Employees” refers to all individuals who are or previously were employed by Fortuna Enterprises, L.P. in California, including any employees staffed with Fortuna Enterprises, L.P. a third party, and classified as non-exempt employees during the time period of April 4, 2023 until a date as determined by the Court. Our offices represent Plaintiff Aneta Gornicka (“Plaintiff”) and other Aggrieved Employees in a lawsuit against Fortuna Enterprises, L.P. (“Defendant”). Plaintiff has been employed by Defendant in California since January 2023. Plaintiff is at all times classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment of minimum and overtime wages due for all time worked. Defendant, however, unlawfully failed to record and pay Plaintiff and other Aggrieved Employees for, including but not limited to, all of their time worked, including minimum and overtime wages and sick pay wages at the correct rate, for all of their missed meal and rest breaks at the correct regular rates, and for all of their time spent working off the clock. Moreover, when Defendant required Plaintiff and Aggrieved Employees to report for work, but “furnished less than half said employee’s usual or scheduled day’s work,” Defendant violated Cal. Code Regs., tit. 8 § 11040, subd. 5(A) by failing to pay Plaintiff and Aggrieved Employees for at least two (2) hours’ worth of work at their regular rate of pay. In addition, when Defendant required Plaintiff and Aggrieved Employees to respond to and engage in additional work, this resulted in a second reporting for work in a single workday, and Defendant failed to pay these employees reporting time pay as required by Cal. Code Regs., tit.

8, § 11040, subd. 5(B). Further, Defendant failed to advise Plaintiff and the other Aggrieved Employees of their right to take separately and hourly paid duty-free ten (10) minute rest periods. *See Vaquero v. Stoneledge Furniture, LLC*, 9 Cal. App. 5th 98, 110 (2017). Additionally, pursuant to Labor Code § 204 *et seq.*, Defendant failed to timely provide Plaintiff and other Aggrieved Employees with their wages. Plaintiff further contends that Defendant failed to provide accurate wage statements to her, and other Aggrieved Employees, in violation of California Labor Code section 226(a). Specifically, PLAINTIFF and the AGGRIEVED EMPLOYEES were paid on an hourly basis. As such, the wage statements should reflect all applicable hourly rates during the pay period and the total hours worked, and the applicable pay period in which the wages were earned pursuant to California Labor Code Section 226(a). The wage statements Defendant provided to PLAINTIFF and the AGGRIEVED EMPLOYEES failed to identify such information. More specifically, the wage statements failed to identify the accurate total hours worked each pay period in violation of Cal. Lab. Code Section 226(a)(2). Additionally, Plaintiff contends that Defendant failed to comply with Industrial Wage Order 7(A)(3) in that Defendant failed to keep time records showing when Plaintiff began and ended each shift and meal period. Plaintiff and other Aggrieved Employees perform tasks that reasonably permit sitting, and a seat would not interfere with their performance of any of their tasks that may require them to stand. Defendant failed to provide Plaintiff and other Aggrieved Employees with suitable seats. Said conduct, in addition to the foregoing, as well as the conduct alleged in the incorporated Complaint, violates Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 218, 221, 226(a), 226.7, 227.3, 246, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide Seating), Violation of the applicable Industrial Welfare Commission Wage Order(s), and is therefore actionable under California Labor Code section 2699.3.

A true and correct copy of the Complaint by Plaintiff against Defendant, which (i) identifies the alleged violations, (ii) details the facts and theories which support the alleged violations, (iii) details the specific work performed by Plaintiff, (iii) sets forth the people/entities, dates, classifications, violations, events, and actions which are at issue to the extent known to Plaintiff, and (iv) sets forth the illegal practices used by Defendant, is attached hereto. This information provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. Plaintiff therefore incorporates the allegations of the attached Complaint into this letter as if fully set forth herein. If the agency needs any further information, please do not hesitate to ask.

This notice is provided to enable Plaintiff to proceed with the Complaint against Defendant as authorized by California Labor Code section 2699, *et seq.* The lawsuit consists of other Aggrieved Employees. As counsel, our intention is to vigorously prosecute the claims as alleged in the Complaint, and to procure civil penalties as provided by the Private Attorney General Statue of 2004 on behalf of Plaintiff and all Aggrieved Employees.

Your earliest response to this notice is appreciated. If you have any questions of concerns, please do not hesitate to contact me at the above number and address.

Respectfully,

/s/ Nicholas J. De Blouw
Nicholas J. De Blouw, Esq.