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Per local Rule, This case is assigned to
Judge Douglas, Danielle K, for all purposes.

Attorneys for Plaintiff GARY ALAN KITTRELL,
on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF CONTRA COSTA

GARY ALAN KITTRELL, on behalf of himself
and current and former aggrieved employees

Case No.: C25-01101

PAGA ACTION

**PLAINTIFF GARY ALAN
KITTRELL'S COMPLAINT FOR:**

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

Plaintiff,

vs.

USA DEBUSK LLC; and DOES 1 to 100,
inclusive,

Defendants.

SUMMONS ISSUED

COMES NOW Plaintiff GARY ALAN KITTRELL ("Plaintiff"), who alleges and
complains against Defendants USA DEBUSK LLC; and DOES 1 to 100, inclusive (collectively
"Defendants") as follows:

I. INTRODUCTION

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

1 worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure to pay
2 overtime wages at the proper overtime rate of pay; failure to authorize or permit all legally required
3 and/or compliant meal periods or pay meal period premium wages; failure to authorize or permit
4 all legally required and/or compliant rest periods or pay rest period premium wages; failure to pay
5 wages for accrued paid sick time at the regular rate of pay; statutory penalties for failure to timely
6 pay earned wages during employment; statutory penalties for failure to provide accurate wage
7 statements; Plaintiff seeks on a representative basis, following notice to the Labor and Workforce
8 Development Agency, civil penalties, reasonable attorneys' fees pursuant to Labor Code section
9 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

10 **II. JURISDICTION AND VENUE**

11 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
12 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
13 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
14 non-exempt employees, and the State of California in excess of thirty-five thousand dollars
15 (\$35,000); Defendants employed Plaintiff and all other current and former aggrieved California-
16 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
17 aggrieved California-based hourly non-exempt employees occurred in locations throughout
18 California, including but not limited to Contra Costa County, at 841 Chevron Way, Richmond, CA
19 94801.

20 **III. PARTIES**

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

1 2019, until on or about the present.

2 2. Plaintiff is informed and believes and thereon alleges that Defendant USA DEBUSK
3 LLC is authorized to do business within the State of California and is doing business in the State of
4 California and/or that Defendants DOES 1-50 are, and at all times relevant hereto were persons
5 acting on behalf of Defendant USA DEBUSK LLC in the establishment of, or ratification of, the
6 aforementioned illegal wage and hour practices or policies. Defendant USA DEBUSK LLC operates
7 in Contra Costa County and employed Plaintiff and aggrieved employees in Contra Costa County,
8 including but not limited to, at 841 Chevron Way, Richmond, CA 94801.

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

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

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

26 6. Plaintiff makes the allegations in this complaint without any admission that, as to
27 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
28 reserves all of Plaintiff's right to plead in the alternative.

1 **FIRST CAUSE OF ACTION**

2 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
3 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

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

7 8. During Plaintiff's employment and continuing through the present, Plaintiff alleges
8 Defendants violated Labor Code sections 204, 223, 226, 226.7, 227.3, 246, 510, 512, 1194, 1197,
9 1198, and the applicable Wage Orders.

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

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

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

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

27 (a) "Rounding down" or "shaving down" Plaintiff's, all hourly drivers', and other
28 current and former aggrieved California-based hourly non-exempt employees other than drivers'

1 daily hours worked at the time of their clock-ins and clock-outs, including clock-ins and clock-outs
2 for meal breaks, to the nearest quarter of an hour, to the benefit of Defendants.

3 (b) Failure to accurately track and/or pay for all minutes actually worked;

4 (c) Requiring employees to complete pre-shift tasks before clocking in and post-shift
5 tasks after clocking out, and to clock out for meal periods and continue working;

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

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

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

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

27 Labor Code section 510.

28 16. In this case, Defendants failed to pay Plaintiff and other current and former aggrieved

1 California-based hourly non-exempt employees overtime wages for all overtime hours worked due
2 to Defendants' policies, practices, and/or procedures including, but not limited to:

3 (a) "Rounding down" or "shaving down" Plaintiff's, all hourly drivers', and other and
4 former aggrieved California-based hourly non-exempt employees other than drivers' daily hours
5 worked at the time of their clock-ins and clock-outs, including clock-ins and clock-outs for meal
6 breaks, to the nearest quarter of an hour, to the benefit of Defendants.

7 (b) Failure to accurately track and/or pay for all minutes actually worked;

8 (c) Requiring employees to complete pre-shift tasks before clocking in and post-shift
9 tasks after clocking out, and to clock out for meal periods and continue working;

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

14 (a) Plaintiff alleges that when he and other current and former aggrieved
15 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
16 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
17 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
18 policy, practice, and/or procedure of failing to include all remuneration such as "ticket bonus pay"
19 and "bonus pay" for example, when calculating Plaintiff's and other current and former aggrieved
20 California-based hourly non-exempt employees' regular rate of pay for the purpose of paying
21 overtime.

22 18. The foregoing policies, practices, and/or procedures resulted in time during each
23 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
24 employees were under the control of Defendants but were not compensated. To the extent that the
25 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
26 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
27 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
28 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code

sections 510, 1194 and 1198, and the applicable Wage Order.

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

20. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512, and 1198; Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

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

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

(a) Failing at times to provide 30 minute meal breaks by "rounding or "shaving" Plaintiff's and all hourly truck drivers' (limited to shifts where they did not operate semi-trucks and/or did not primarily operate semi-trucks) and all other current and former aggrieved California-

1 based hourly non-exempt employees clock ins and clock outs for meal breaks to the nearest quarter
2 of an hour, to the benefit of Defendants.

3 (b) Occasionally failing to provide Employee and all other current and former aggrieved
4 California-based hourly non-exempt drivers' (limited to shifts where they did not operate semi-
5 trucks and/or did not primarily operate semi-trucks) and all other hourly non-exempt employees
6 timely, uninterrupted duty-free meal breaks of at least 30 minutes for every five hours worked.

7 (c) Occasionally interrupting meal periods; not providing timely meal periods; failing to
8 provide first and second meal periods; providing short meal periods, including meal periods that
9 were recorded for less than thirty minutes, and meal periods that may appear on the record to be
10 thirty minutes or longer but in practice were shorter than thirty minutes due to time required to walk
11 to and from a suitable break area; otherwise requiring on-duty/on-call meal periods; auto-deducting
12 meal periods that could not be auto-deducted by law or during which employees worked; having
13 employees enter meal times that appeared to be compliant but were not accurate reflections of meal
14 periods taken.

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

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

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

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

9 27. California law requires every employer to authorize and permit an employee a rest
10 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor Code
11 section 226.7; Wage Order 9 at §12. Under California law, "[e]mployees are entitled to 10 minutes'
12 rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six
13 hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker*
14 *Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code section 226.7;
15 Wage Order 9 at §12. Rest periods, insofar as practicable, shall be in the middle of each work period.
16 Wage Order 9 at §12. Additionally, the rest period requirement "obligates employers to permit –
17 and authorizes employees to take – off-duty rest periods." *Augustus v. ABM Security Services, Inc.*,
18 (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all
19 duties and relinquish control over how employees spend their time. *Id.*

20 28. If the employer fails to authorize or permit a required rest period, the employer must
21 pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday the
22 employer did not authorize or permit a legally required rest period. Labor Code section 226.7; Wage
23 Order 9 at § 12.

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

28 (a) Occasionally failing to provide Plaintiff and all hourly truck drivers (limited to shifts

1 where they did not operate semi-trucks and/or did not primarily operate semi-trucks) and other
2 current and former aggrieved California-based hourly non-exempt employees with net ten (10)
3 minute rest breaks for every four (4) hours worked or major fraction thereof limited to shifts where
4 they were not operating semi-trucks or not primarily operating semi-trucks.

5 (b) Occasionally failing to provide rest periods all together; failing to provide rest
6 periods that were at least ten minutes in length, including rest periods that were shorter than ten
7 minutes, or rest periods that may have encompassed a total of ten minutes but were in practice less
8 than ten uninterrupted minutes due to, without limitation, due to time required to walk to and from
9 a suitable break area, not providing rest periods in a timely fashion; and not permitting employees
10 to leave the premises; and otherwise requiring on-duty/on-call rest periods.

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

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

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

1 33. **Failure to provide sick pay wages:** Defendants had a policy and/or procedure where
2 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
3 accrued paid sick time.

4 34. Labor Code section 246, subdivision (a), states in relevant part “[a]n employee
5 who...works in California for the same employer for 30 or more days within a year from the
6 commencement of employment is entitled to paid sick days.” Additionally, an employee accrues
7 paid sick days at the rate of no-less-than one (1) hour per every thirty (30) hours worked, beginning
8 at the commencement of employment. Labor Code section 246(b).

9 35. Here, Plaintiff and other current and former aggrieved California-based hourly non-
10 exempt employees were employed by Defendants for 30 or more days and were entitled to paid sick
11 days. Defendants, however, lacked a policy, practice, and/or procedure whereby Plaintiffs and other
12 current and former aggrieved California-based hourly non-exempt employees who were employed
13 by Defendants for 30 days or more could accrue paid sick days at the rate of no-less-than one (1)
14 hour per every thirty (30) hours worked, beginning at the commencement of employment as required
15 by Labor Code section 246(b).

16 36. In this case, Plaintiff alleges that when he and other current and former aggrieved
17 California-based hourly non-exempt employees elected to use paid sick time, Defendants failed to
18 pay them sick time wages at the proper sick time rate of pay due to Defendants’ failure to include
19 all remuneration when calculating the sick time rate of pay. Specifically, Defendants maintained a
20 policy, practice, and/or procedure of failing to include all remuneration including but not limited to
21 “ticket bonus pay” and “bonus pay” for example, when calculating Plaintiff and other current and
22 former aggrieved California-based hourly non-exempt employees’ regular rate of pay for the
23 purpose of paying sick time.

24 37. Defendants’ foregoing policy, practice, and/or procedure resulted in Defendants
25 failing to provide Plaintiff and other current and former aggrieved California-based hourly non-
26 exempt employees’ paid sick days, in violation of Labor Code section 246.

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

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

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

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

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

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

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

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

19 44. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
20 section 2699.3. On February 11, 2025, Plaintiff filed a PAGA Claim Notice with the LWDA and
21 provided notice to Defendants by certified mail which provided notice of the specific provisions of
22 the Labor Code alleged to have been violated, including the facts and theories to support the
23 violations alleged.

24 45. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
25 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
26 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
27 parties notice within 60 days of the date of Plaintiff’s PAGA Claim Notice that the LWDA intends
28 to investigate Plaintiff’s claims.

1 46. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
2 penalties for Defendants' violations of Labor Code sections 204, 223, 226(a), 226.7, 246, 510, 512,
3 1194, and 1198., During Plaintiff's employment and continuing through the present, preceding
4 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following
5 amounts:

6 a. For violations of Labor Code sections 226(a), 226.7, and 1198; one hundred
7 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
8 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation [penalty
9 amounts established by Labor Code section 2699(f)(2)].

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

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

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

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

28 47. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of

reasonable attorneys' fees and costs in connection with his claims for civil penalties.

PRAYER FOR RELIEF

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

ON THE FIRST CAUSE OF ACTION:

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

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

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

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

Dated: April 18, 2025

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

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GARY ALAN KITTRELL
on behalf of himself and current and former
aggrieved employees