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Clerk of the Superior Court
By Melissa Valdez, Deputy Clerk

Alex Asil Mashiri, Esq. (SBN 283798)
alex@mashirilawfirm.com
MASHIRI LAW FIRM, APC
11251 Rancho Carmel Drive #500694
San Diego, CA 92150
Tel: (858) 348-4938
Fax: (858) 348-4939

Tamim Jami, Esq. (SBN 311351)
tamim@jamilaw.com
THE JAMI LAW FIRM P.C.
3525 Del Mar Heights Rd #941
San Diego, CA 92130
Tel: (858) 284-0248
Fax: (858) 284-0977

Attorneys for Plaintiff
RAUL NUNEZ

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO**

RAUL NUNEZ, an individual, for the real party
in interest, the State of California,

Plaintiff,

vs.

SOL TRANSPORTATION INC.; LAUDAN
LLC DBA FEDVAN; and DOES 1 through 50,

Defendants.

Case No. 37-2022-00015878-CU-OE-CTL

REPRESENTATIVE ACTION

**COMPLAINT FOR VIOLATIONS OF THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code Section 2698 *et seq.*)**

1 Plaintiff RAUL NUNEZ (“Plaintiff”), in his capacity as the State of California’s designated
2 proxy under the Private Attorneys General Act, and on behalf of other current and former California
3 employees (“Represented Employees”) alleges the following:

4 **NATURE OF THE ACTION**

5 1. Pursuant to the Private Attorneys General Act (“PAGA”), incorporated in Labor Code
6 sections 2698, 2699 *et seq.*, Plaintiff brings this representative action against Defendants SOL
7 TRANSPORTATION INC. (“SOL”), LAUDAN LLC DBA FEDVAN (FEDVAN), and DOES 1
8 through 50 (all defendants are hereinafter collectively referred to as “Defendants”) for wage and hour
9 violations of the California Labor Code and the applicable Industrial Welfare Commission Wage
10 Order (the “IWC Wage Order”).

11 2. Pursuant to Labor Code section 2699 *et seq.*, any provision of the Labor Code that
12 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
13 Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies or employees
14 for violation of the code may, as an alternative, be recovered through a civil action brought by an
15 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
16 to the procedures specified in Labor Code section 2699.3.

17 3. Through this representative action, Plaintiff seeks to recover civil penalties under the
18 PAGA. No class certification is required. (*Arias v. Superior Court* (2009) 46 Cal.4th 969.)

19 **JURISDICTION AND VENUE**

20 4. Pursuant to Article VI, section 10 of the California Constitution, subject matter
21 jurisdiction is proper in the Superior Court of California, County of San Diego, State of California
22 because Plaintiff alleges claims arising under California law.

23 5. This Court has jurisdiction over Defendants because each is believed to be an
24 association, corporation, business entity, or individual that conducts substantial business in the State
25 of California, County of San Diego.

26 6. This Court has jurisdiction over Plaintiff’s claim for civil penalties under the PAGA.

27 7. Pursuant to California Code of Civil Procedure section 395, venue is proper in the
28 Superior Court of California for the County of San Diego because this is where the wrongful

1 misconduct alleged herein occurred.

2 **THE PARTIES**

3 8. The State of California is the real party in interest in a PAGA action. (*Kim v. Reins Int'l*
4 *California, Inc.* (2020) 9 Cal.5th 73, 81. [The “government entity on whose behalf the plaintiff files
5 suit is always the real party in interest.”].)

6 9. Plaintiff is an “aggrieved employee” because he was employed by Defendants and had
7 one or more of the alleged violations committed against him, and therefore is properly suited to act
8 on behalf the state, and collect civil penalties for all violations committed against the Represented
9 Employees, who are also aggrieved employees as defined by Labor Code section 2699(c).

10 10. Plaintiff worked for Defendants during which time he was paid hourly and was
11 considered non-exempt.

12 11. Defendants are the owner and operator of an express delivery service in California.

13 12. The true names and capacities, whether individual, corporate, associate or otherwise of
14 the Defendant named herein as DOES 1 through 50, are unknown to Plaintiff at this time. Plaintiff
15 therefore sues said Defendants by such fictitious names pursuant to California Code of Civil
16 Procedure section 474. Plaintiff will seek leave to amend the operative complaint (“Complaint”) to
17 allege the true names and capacities of DOES 1 through 50 when their names are ascertained. Plaintiff
18 is informed and believes, and based thereon allege, that each of the DOE Defendants is in some
19 manner liable to Plaintiff for the events and actions alleged herein.

20 13. Plaintiff is informed and believes, and based thereon allege, that at all times, each
21 Defendant was acting as an agent, joint venturer, integrated enterprise and/or alter ego for each of the
22 other defendants and each were co-conspirators with respect to the acts and the wrongful conduct
23 alleged herein so that each is responsible for the acts of the other in connection with the conspiracy
24 and in proximate connection with the other defendants.

25 14. Plaintiff is informed and believes, and based thereon alleges, that each Defendant was
26 acting partly within and partly without the scope and course of their employment, and was acting with
27 the knowledge, permission, consent, and ratification of every other Defendant.

28 15. At all material times, Defendants were and/or are Represented Employees’ employers

1 or persons acting on behalf of Represented Employees' employer, under California law, the IWC
2 Wage Order, and Labor Code sections 558 and 558.1 and thus are jointly and severally liable for the
3 violations alleged herein and any amounts awarded and/or recoverable as a result of this action.

4 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

5 16. On February 18, 2022, Plaintiff, via counsel, sent the statutorily required notice to the
6 LWDA, indicating that Plaintiff intends to pursue claims against Defendants for violations of the
7 Labor Code.

8 17. On February 18, 2022, Plaintiff, via counsel, sent a copy of the February 18, 2022
9 notice to Defendants SOL and FEDVAN.

10 18. The statutory period expired since Plaintiff sent the February 18, 2022 notice to the
11 LWDA and LWDA did not serve Plaintiff with a notice of its intent to assume jurisdiction over the
12 applicable penalty claims and did not provide notice as set forth in Labor Code section
13 2699.3(a)(2)(A).

14 19. Therefore, Plaintiff has exhausted the administrative requirements under the PAGA.

15 **PAGA REPRESENTATIVE ACTION CLAIMS**

16 20. On information and belief, current and former employees of Defendants were subject
17 to wage and hour violations by Defendants, specifically by Defendants' violations of Labor Code
18 sections 201, 202, 203, 204, 226, 226(a)(1)-(a)(9), 226.3, 226.7, 246, 248.5, 432.3, 510, 512, 1194,
19 1197, 1197.1, 1198, 2698, and 2699 et seq.

20 21. California law provides that an aggrieved employee may file an action against an
21 employer for penalties in connection with violations of the Labor Code and Wage Order provided the
22 aggrieved employee file an action on behalf of himself or herself and other current and former
23 employees.

24 22. The Causes of Action alleged in this Complaint are appropriately suited for a
25 Representative Action under the PAGA because:

- 26 a. Their action involves allegations of violations of provisions of the California Labor
27 Code that provide for a civil penalty to be assessed and collected by the LWDA or any
28 departments, divisions, commissions, boards, agencies or employees;

- 1 b. Plaintiff is an “aggrieved employee” because Plaintiff was employed by the alleged
2 violator and had one or more of the alleged violations committed against her; and
3 c. Plaintiff has satisfied the procedural requirements of Labor Code section 2699.3, as set
4 forth above.

5 23. As a result of the acts alleged above, Plaintiff seeks to recover civil penalties under the
6 PAGA for violations of the following Labor Code provisions.

- 7 a. failure to provide accurate sick pay in violation of Labor Code section 246;
8 b. failure to provide overtime wages in violation of Labor Code sections 510, 1194, 1198,
9 and the IWC Wage Order;
10 c. failure to provide accurate itemized wage statements in violation of Labor Code
11 sections 226, and 226.3;
12 d. failure to provide accurate sick pay in violation of Labor Code sections 246, 1197,
13 1197.1;
14 e. failure to provide meal breaks and meal premiums in violation of Labor Code sections
15 512 and 226.7;
16 f. failure to provide rest breaks and premiums in violation of Labor Code section 226.7
17 and IWC;
18 g. failure to pay earned wages in violation of Labor Code section 204;
19 h. failure to pay earned wages in violation of Labor Code sections 201, 202, and 203; and
20 i. failure to comply with Labor Code 432.3(b).

21 **FIRST CAUSE OF ACTION**
22 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
23 **sections 246 and 246(I) against all Defendants)**

24 24. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set
25 forth herein.

26 25. Under Labor Code section 246, employers in California must provide employees with
27 paid sick leave.

28 26. Plaintiff was entitled to paid sick leave.

27 27. Upon information and belief, Defendants failed to properly provide Plaintiff and the

1 Represented Employees with paid sick leave, including paying sick at the correct rate, as mandated
2 by Labor Code section 246(l)(1)-(3).

3 28. By way of example, Defendants failed to compensate sick leave at the correct rate of
4 pay under Labor Code section 246(l) because it failed to account for all compensation earned
5 including, but not limited to nondiscretionary earnings, including fringe wages and other incentives.

6 29. During his employment, Plaintiff would regularly receive nondiscretionary earnings,
7 including fringe wages and other incentives.

8 30. Upon information and belief, Defendants failed to properly provide Plaintiff and the
9 Represented Employees with paid sick leave.

10 31. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor
11 Code sections 246 and 246(l).

12 32. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
13 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
14 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
15 all Labor Code provisions for which a civil penalty is not specifically provided.

16 33. Pursuant to Labor Code section 248.5, if applicable herein, Plaintiff seeks to recover
17 attorney's fees, costs, equitable relief in the form of civil penalties, in an amount to be shown
18 according to proof.

19 34. Plaintiff is seeking civil penalties against Defendants under the PAGA, including
20 Labor Code sections 2699(f), 1197.1, 248.5, and/or any other applicable statute allowing recovery of
21 civil penalties under the PAGA in an amount to be shown according to proof.

22 35. Pursuant to Labor Code section 248.5, Plaintiff seeks to recover attorney's fees, costs,
23 and civil penalties on behalf of himself and the Represented Employees as alleged herein in an amount
24 to be shown according to proof.

25 Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees,
26 costs, filing fees paid to the LWDA and civil penalties in an amount to be shown according to proof.

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SECOND CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for Violation of Labor Code Sections 510 and 1194 against all Defendants)

36. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

37. Eight hours of labor constitutes a day's work, and any work in excess of 8 hours in 1 workday, any work in excess of 40 hours in any one workweek, and for the first 8 hours worked on the 7th consecutive day of work in a workweek, shall be compensated at the rate of no less than one and one half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. (Labor Code § 510 and Applicable IWC Wage Orders § 3(A).)

38. Upon information and belief, Defendants failed to properly provide Plaintiff and the Represented Employees with overtime pay for hours worked in excess of eight hours in a workday and/or hours worked in excess of 40 hours in one workweek.

39. Plaintiff and Represented Employees would regularly receive nondiscretionary earnings, including fringe wages and other incentives.

40. Plaintiff and Represented Employees were not paid proper overtime when they worked overtime hours because Defendants failed to include all compensation earned during a given period when determining the regular rate of pay.

41. Defendants would also fail to issue corresponding Fringe wages for any of those hours worked by Plaintiff and Represented Employees that were considered overtime hours. As a result, Fringe wages were not adequately issued when Plaintiff and Represented Employees worked overtime.

42. Plaintiff and Represented Employees were not paid proper overtime when they worked overtime hours because Defendants failed to properly compute the regular rate of pay.

43. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 510, 558, 1194, 1198, and the Applicable IWC Wage Order section 3(A).

44. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

45. Pursuant to Labor Code section 558, any employer or other person acting on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them, penalties of fifty hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and one hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

46. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 558, the Applicable IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

47. Pursuant to Labor Code section 1194, Plaintiff seeks to recover attorney's fees, costs, interest, and civil penalties in an amount to be shown according to proof.

48. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

THIRD CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code section 226(a)(1) against all Defendants)

49. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

50. Labor Code section 226(a)(1) requires that wage statements that an employer issues to its employees accurately state the gross wages earned.

51. Defendants failed to accurately state the proper gross on the wage statements in violation of Labor Code section 226(a)(1). By way of one example, the wage statements failed to include the proper amounts of gross wages because it failed to include the proper amount of sick pay,

1 overtime wages, and meal premiums. Other examples of such failures exist.

2 52. The PAGA imposes upon Defendants, and each of them, penalties for violating
3 Labor Code section 226(a)(1).

4 53. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties
5 of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
6 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
7 Code provisions for which a civil penalty is not specifically provided.

8 54. With respect to violations of Labor Code section 226, Labor Code section 226.3
9 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee
10 for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each
11 employee for each pay period.

12 55. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
13 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the
14 PAGA as alleged herein in an amount to be shown according to proof.

15 56. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
16 recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
17 shown according to proof.

18
19 **FOURTH CAUSE OF ACTION**
20 **(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code**
21 **section 226(a)(5) against all Defendants)**

22 57. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
23 though set forth herein.

24 58. Labor Code section 226(a)(5) requires that wage statements that an employer
25 issues to its employees accurately state the net wages earned.

26 59. Defendants failed to accurately state the proper net on the wage statements in
27 violation of Labor Code section 226(a)(5). By way of one example, the wage statements failed to
28 include the proper amounts of net wages because it failed to include the proper amount of sick pay,
overtime wages, and meal premiums. Other examples of such failures exist.

60. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226(a)(5).

61. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

62. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

63. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

64. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

FIFTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code section 226(a)(2) against all Defendants)

65. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

66. Labor Code section 226(a)(2) requires that wage statements that an employer issues to its employees accurately state the total hours worked.

67. Defendants failed to accurately state the total hours worked on the wage statements in violation of Labor Code section 226(a)(2).

68. All other claims alleged in this complaint have also resulted in a derivative claim of an inaccurate itemized wage statement.

69. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226(a)(2).

70. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

71. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

72. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of penalties under the PAGA in an amount to be shown according to proof.

73. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

SIXTH CAUSE OF ACTION
(Representative Claim for Civil Penalties Under the PAGA for violations of Labor Code sections 226(a)(9) against all Defendants)

74. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

75. Labor Code section 226(a)(9) requires that the employer's wage statements accurately state all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

76. Defendants failed to provide the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code section 226(a)(9).

77. By way of one example, the rate and hours for Fringe wages are not accurately itemized on the wage statement.

78. By way of another example, the rates for sick pay, overtime, and meal premiums are inaccurately itemized.

79. By way of another example, the rate and hours for other applicable rates in effect are absent and/or inaccurately itemized. Other examples of such failures exist.

80. All other claims alleged in this complaint have also resulted in a derivative claim of an inaccurate itemized wage statement.

81. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a)(9).

82. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

83. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

84. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

85. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

SEVENTH CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code section 226(a) against all Defendants)

86. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

87. Under Labor Code section 226(a) an employer must either keep a duplicate of the wage statement provided to an employee or a computer-generated record that accurately shows all of the information required under 226(a)(1) through (a)(9).

88. Upon information and belief, during all times relevant to this action, Defendants failed to keep records required under Labor Code section 226(a). By way of example, the copies of the wage statements that Defendants kept do not include the proper gross and net wages, total hours worked, all applicable hourly rates and corresponding hours worked as described herein and in the aforementioned paragraphs.

89. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code section 226(a).

90. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

91. With respect to violations of Labor Code section 226, Labor Code section 226.3 imposes a civil penalty of two hundred and fifty dollars (\$250) for initial violations for each employee for each pay period, and one thousand dollars (\$1000) for each subsequent violation for each employee for each pay period.

92. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.3, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

93. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

EIGHTH CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code
Section 226.7(c) and the IWC Wage Order against all Defendants)

94. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

95. Labor Code section 226.7 prohibits an employer from requiring an employee to work during a meal period and provides that an employee must be paid a wage for doing so.

96. Upon information and belief, during all times relevant to this action, Defendants violated Labor Code sections 512, 226.7, and the IWC Wage Order.

97. Under Labor Code section 226.7(c), if an employer fails to provide an employee with a proper meal period, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

98. Because Defendants failed to issue meal premiums at the regular rate of pay for the pay period, Defendants violated Labor Code § 226.7(c) and IWC Wage Order. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th 858.)

99. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226.7 and the IWC Wage Order.

100. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

101. Plaintiff is seeking civil penalties against Defendants under Labor Code sections 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

102. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, civil penalties, and wages on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

NINTH CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code Sections 512, 226.7 and the IWC Wage Order against all Defendants)

103. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

104. Under Labor Code section 512 and the IWC Wage Order, an employer must provide a meal period of at least thirty minutes if the employee works more than five hours. California

1 Labor Code section 512 “requires a first meal period no later than the end of an employee’s fifth hour
2 of work [...]” (*Brinker Rest. Corp. v. Super. Ct.* (2012) 53 Cal.4th 1004.)

3 105. Labor Code section 226.7 prohibits an employer from requiring an employee to
4 work during a meal period and provides that an employee must be paid a wage for doing so.

5 106. Upon information and belief, during all times relevant to this action, Defendants
6 violated Labor Code sections 512, 226.7, and the IWC Wage Order.

7 107. Upon information and belief, during all times relevant to this action, Defendant
8 failed to provide Plaintiff and the Aggrieved Employees with compliant meal periods in violation of
9 Labor Code section 512, 226.7, and the IWC Wage Order. By way of example, Plaintiff would
10 regularly be required to work shifts of five hours or more but was, on occasion, not permitted nor
11 relieved to take a 30-minute meal period before the end of the fifth hour of work due to pressure
12 stemming from meeting delivery and time quotas.

13 108. The PAGA imposes upon Defendants, and each of them, penalties for violating
14 Labor Code sections 512, 226.7 and the IWC Wage Order.

15 109. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties
16 of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two
17 hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor
18 Code provisions for which a civil penalty is not specifically provided.

19 110. Pursuant to Labor Code section 558, any employer or other person acting on behalf
20 of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any
21 provision regulating hours and days of work in any order of the Industrial Welfare Commission shall
22 be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and
23 each of them, penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial
24 violations, and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent
25 violations.

26 111. Plaintiff is seeking civil penalties against Defendants under Labor Code sections
27 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of
28 civil penalties under the PAGA in an amount to be shown according to proof.

112. Pursuant to the PAGA, or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, civil penalties, and wages on behalf of himself and the Represented Employees as alleged herein in an amount to be shown according to proof.

TENTH CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code section 226.7 and the IWC Wage Order against all Defendants)

113. Plaintiff re-alleges and incorporate by reference the foregoing allegations as though set forth herein.

114. Rest breaks under California labor law are required for non-exempt employees who work three and a half (3 1/2) or more hours in a day. Employees are entitled to ten (10) minutes of rest period for each four (4) hours, or a substantial fraction thereof, that they work in a day.

115. Labor Code section 226.7 prohibits an employer to require an employee to work during a rest break and provides that an employee must be paid a wage for doing so.

116. Upon information and belief, during all times relevant to this action, Defendants violated the IWC Wage Order.

117. Upon information and belief, during all times relevant to this action, Defendants failed to provide Plaintiff and the Represented Employees with compliant rest periods in violation of the IWC Wage Order. By way of example, Plaintiff would regularly work shifts of three and a half hours or more but was not always permitted nor relieved to take a 10-minute rest period due to pressure stemming from meeting delivery and time quotas.

118. Under Labor Code section 226.7(c), if an employer fails to provide an employee with a proper rest period, the employer shall pay the employee one hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

119. At minimum, Plaintiff and the Represented Employees should have been paid a rest break premium for missed, delayed, or shortened rest periods, which Defendants failed pay at times. As such, Defendants violated Labor Code section 226.7(c).

120. PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 226.7 and the IWC Wage Order.

121. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

122. Pursuant to Labor Code section 558, any employer or other person acting on behalf of an employer who violates, or causes to be violated, Labor Code sections 500 to 558.1 or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty. Specifically, Labor Code section 558 imposes upon Defendants, and each of them, penalties of one hundred dollars (\$50) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$100) per pay period, per aggrieved employee for subsequent violations.

123. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 226.7, 558, the IWC Wage Order, and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

124. Pursuant to PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

ELEVENTH CAUSE OF ACTION
(Representative Claims for Civil Penalties Under the PAGA for violation of Labor Code section 204 against all Defendants)

125. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

126. Pursuant to Labor Code section 204, earned wages must be paid in a timely manner.

127. Defendants violated Labor Code section 204 because they failed to timely pay Plaintiff and the Represented Employees all earned wages. By way of one example, Plaintiff and Represented Employees were not paid proper wages because Defendants failed to appropriately compensate Plaintiff and the Represented Employees for the use of their leave pursuant to the correct rate mandated in Labor Code section 246. By way of another example, Plaintiff was owed overtime

1 wages, which Defendants failed to compensate Plaintiff at the appropriate regular rate of pay due to
2 its failure to incorporate all incentive compensation earned during a given pay period.

3 128. The PAGA imposes upon Defendants, and each of them, civil penalties for
4 violating Labor Code section 204.

5 129. Labor Code section 2699(f) imposes upon Defendants, and each of them, civil
6 penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations,
7 and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for
8 all Labor Code provisions for which a civil penalty is not specifically provided.

9 130. Plaintiff is seeking civil penalties against Defendants under Labor Code section
10 2699(f), and/or any other applicable statute allowing recovery of penalties under the PAGA on behalf
11 of himself and the Represented Employees as alleged herein in an amount to be shown according to
12 proof.

13 131. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to
14 recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be
15 shown according to proof.

16
17 **TWELFTH CAUSE OF ACTION**
18 **(Representative Claim for Civil Penalties Under the PAGA for violation of Labor Code**
19 **Sections 201, 202, and 203 against all Defendants)**

20 132. Plaintiff re-alleges and incorporates by reference the foregoing allegations as
21 though set forth herein.

22 133. Under Labor Code section 201, if an employee is discharged by his/her employer,
23 the wages earned and unpaid at the time of discharge are due and payable immediately.

24 134. Under Labor Code section 202, if on the other hand, "an employee not having a
25 written contract for a definite period quits his or her employment, his or her wages shall become due
26 and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
27 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of
28 quitting."

135. Labor Code section 203 provides, in pertinent part: “If an employer willfully fails to pay, without abatement or reduction, ... any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days. ...”

136. Upon information and belief, Plaintiff and the Represented Employees did not receive all wages upon termination or separation of employment. By way of example, Plaintiff was owed wages for sick leave, overtime, and meal premiums. Defendants would also fail to issue corresponding Fringe wages for any of those hours worked by Plaintiff and Represented Employees that were considered overtime hours. To this date, Defendants have not paid Plaintiff and Represented Employees all due and owed wages.

137. The PAGA imposes upon Defendants, and each of them, civil penalties for violating Labor Code sections 201, 202, and 203.

138. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

139. Plaintiff is seeking penalties against Defendants under Labor Code sections 2699(f), 210, and/or any other applicable statute allowing recovery of civil penalties in an amount to be shown according to proof.

140. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA, and civil penalties in an amount to be shown according to proof.

THIRTEENTH CAUSE OF ACTION
**(Representative Claim for Civil Penalties Under the PAGA for violation of Labor Code
Section 432.3(b) against all Defendants)**

141. Plaintiff re-alleges and incorporates by reference the foregoing allegations as though set forth herein.

142. Under Labor Code section 432.3(b), “An employer shall not, orally or in writing, personally or through an agent, seek salary history information, including compensation and benefits, about an applicant for employment.”

143. Defendants violated Labor Code section 432.3 because they seek salary history from applicants for employment.

144. The PAGA imposes upon Defendants, and each of them, penalties for violating Labor Code section 432.3.

145. Labor Code section 2699(f) imposes upon Defendants, and each of them, penalties of one hundred dollars (\$100) per pay period, per aggrieved employee for initial violations, and two hundred dollars (\$200) per pay period, per aggrieved employee for subsequent violations for all Labor Code provisions for which a civil penalty is not specifically provided.

146. Plaintiff is seeking civil penalties against Defendants under Labor Code section 2699(f) and/or any other applicable statute allowing recovery of civil penalties under the PAGA in an amount to be shown according to proof.

147. Pursuant to the PAGA, and/or Labor Code section 2699(g), Plaintiff seeks to recover attorney's fees, costs, filing fees paid to the LWDA and civil penalties in an amount to be shown according to proof.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment against Defendants as follows:

1. An award of civil penalties pursuant to the PAGA and/or other applicable laws;
2. An award of reasonable attorneys' fees, costs, and filing fees paid to the LWDA pursuant to the PAGA, California Labor Code section 2699(g), and/or other applicable law;
3. Post-judgment interest as provided by law; and
4. Such other and further relief that the Court may deem just and proper.

Dated: April 27, 2022

THE JAMI LAW FIRM P.C.

By: Tamim Jami
 Tamim Jami
 Attorney for Plaintiff