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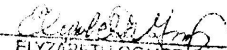
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUL 27 2021

BY 
ELIZABETH GOMEZ, DEPUTY

Attorneys for Plaintiff DeAndre Moreno, on behalf of
himself and all other aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

DEANDRE MORENO, on behalf of himself
and all other aggrieved employees,

Plaintiff,

vs.

ADECCO USA, INC.; PREZERO US, INC.;
ROPLAST INDUSTRIES, LLC; and Does 1-
10, inclusive,

Defendants.

CASE NO.: **CIV SB 2121804**

**SC-2021-47550-47551/SC-2021-47552-47553
COMPLAINT FOR RECOVERY OF
CIVIL PENALTIES PURSUANT TO
THE PRIVATE ATTORNEYS
GENERAL ACT ("PAGA")**

61000.00
05.

(1) PAGA Civil Penalties for
Violations of Labor Code §§ 1194,
1197.1 and the Applicable Wage Order
for Failure to Pay All Minimum Wages;

(2) PAGA Civil Penalties for
Violations of Labor Code §§ 510, 1194,
1198 and the Applicable Wage Order for
Failure to Pay All Overtime Wages;

(3) PAGA Civil Penalties for
Violations of Labor Code §§ 204, 210
and the Applicable Wage Order for
Failure to Timely Pay All Wages;

(4) PAGA Civil Penalties for
Violations of Labor Code §§ 226.7, 512
and the Applicable Wage Order for
Failure to Provide Timely and Compliant
Meal Periods;

(5) PAGA Civil Penalties for
Violations of Labor Code § 226.7, and
the Applicable Wage Order for Failure to
Provide Timely and Compliant Rest
Periods;

(6) PAGA Civil Penalties for
Violations of Labor Code §§ 226(a),

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226.3 and the Applicable Wage Order for Failure to Provide Accurate and Itemized Wage Statements;

(7) PAGA Civil Penalties for Violation of Labor Code § 246 for Failure to Pay Sick Pay;

(8) PAGA Civil Penalties for Violations of Labor Code §§ 201-203 for Failure to Timely Pay All Wages Due to Terminated/Separated Employees; and

(9) PAGA Civil Penalties for Violations of Labor Code §§ 2802 and the Applicable Wage Order for Failure to Reimburse All Reasonable and Necessary Business Expenses.

DEMAND FOR JURY TRIAL

1 Plaintiff DeAndre Moreno (“Plaintiff”), on behalf of himself and all others similarly
2 aggrieved alleges as follows:

3 **INTRODUCTION**

4 1. Plaintiff is an individual who worked as a temporary worker for Defendants Adecco
5 USA, Inc., PreZero US, Inc., Roplast Industries, LLC, Does 1 through 10, inclusive
6 (“Defendants”). Plaintiff seeks to recover civil penalties for all California-based “aggrieved
7 employees” during the “Relevant Time Period” (defined as one year and 179 days before Plaintiff
8 gave notice of these claims to the California Labor and Workforce Development Agency
9 (“LWDA”) up to and including the date of commencement of trial) who incurred wage and hour
10 violations and losses as hereinafter described.

11 2. On May 19, 2021, Plaintiff gave notice of these claims to the (“LWDA”) and to the
12 agent for service of process for each Defendant. Plaintiff has not received any response from the
13 LWDA indicating that it intends to investigate these claims. Accordingly, Plaintiff has exhausted all
14 notice requirements under the PAGA.

15 **JURISDICTION AND VENUE**

16 3. The relief sought by Plaintiff on behalf of himself and the aggrieved employees
17 below exceeds the minimal jurisdictional limits of the Superior Court and will be established
18 according to proof at trial. The Court has personal jurisdiction over each of the parties because
19 they are either citizens of this State, doing business in this State or otherwise have minimum
20 contacts with this State.

21 4. Based on information and belief, Plaintiff alleges that this entire action arises solely
22 under the laws of the State of California and applicable regulations of the health, safety and wages
23 of the employees residing in the State of California. Plaintiff alleges, on information and belief,
24 that no federal question is raised. Moreover, PAGA civil penalty actions are not subject to federal
25 jurisdiction.

26 5. Venue is proper in this Court because, upon information and belief, Plaintiff
27 worked for Defendants in this county, Defendants transact business or have offices in this county,
28 and the acts and omissions alleged herein took place in this county.

PARTIES

Plaintiff

6. Plaintiff DeAndre Moreno is a citizen of California who worked for Defendants within the past year. Details regarding Plaintiff's precise hours, pay, and revenue generated for Defendant are available by reference to Defendant's records. Throughout Plaintiff's employment, he and his co-workers were subjected to wage theft.

Defendants

7. Defendant Adecco USA, Inc. is a Delaware corporation and headquartered in Jacksonville, Florida. Defendant Adecco USA, Inc. does business in the United States and the state of California that supplies employees/workers to PreZero US, Inc., Roplast Industries, LLC and other entities.

8. Defendant PreZero US, Inc. is a Delaware corporation and headquartered in Jurupa Valley, California. Defendant PreZero US, Inc.'s is a recycling services company with various locations in the state of California and Canada.

9. Defendant Roplast Industries, LLC is a California corporation and manufactures polyethylene-based films in the state of California. It was acquired by PreZero US, Inc. in March of 2021.

10. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names Does 1 through 10 but will seek leave of this Court to amend this Complaint and serve such fictitiously named Defendants once their names and capacities become known.

11. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendant, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the aggrieved employees.

12. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or Does 1

1 through 10, acting as the agent or alter ego for the other, with legal authority to act on the other's
2 behalf. The acts of any and all Defendants were in accordance with, and represent, the official
3 policy of Defendants.

4 13. At all relevant times, Defendants, and each of them, acted within the scope of such
5 agency or employment, or ratified each and every act or omission complained of herein. At all
6 relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each
7 and all the other Defendants in proximately causing the damages herein alleged.

8 14. Plaintiff is informed and believes, and thereon alleges, that each of said Defendants
9 is in some manner intentionally, negligently or otherwise responsible for the acts, omissions,
10 occurrences and transactions alleged herein.

11 **GENERAL ALLEGATIONS**

12 15. At all relevant times mentioned herein, Defendants employed Plaintiff and other
13 persons as non-exempt employees.

14 16. Defendants employed Plaintiff during the relevant time period.

15 17. Plaintiff is informed and believes, and thereon alleges, that at all times mentioned
16 herein, Defendants were advised by skilled lawyers, employees, and other professionals who were
17 knowledgeable about California's wage and hour laws, employment and personnel practices, and
18 the requirements of California law.

19 18. Plaintiff is informed and believes, and thereon alleges that Defendants have
20 maintained a consistent policy of failing to pay Plaintiff and other aggrieved employees for all
21 hours worked, including minimum, regular and overtime wages, by requiring Plaintiff and other
22 aggrieved employees to complete mandatory COVID-19 health screenings and drug tests off-the-
23 clock, resulting in failure to pay all wages. Defendants also failed to maintain a timekeeping
24 system that permitted employees to accurately record their hours worked resulting in loss of wages.

25 19. Plaintiff is informed and believes, and thereon alleges that Defendants failed to
26 provide Plaintiff and other aggrieved employees timely, uninterrupted, off-duty meal periods of
27 no less than thirty minutes before their fifth hour of work and failed to provide a second meal
28 period for shifts of more than ten hours. As a result, when Plaintiff and other aggrieved employees

1 took meal periods, they were regularly interrupted, less than thirty minutes, and Defendants failed
2 to compensate Plaintiff and other aggrieved employees for these missed meal periods.

3 20. Plaintiff is informed and believes, and thereon alleges that Defendants employed
4 Plaintiff and other aggrieved employees for work periods of four hours or major fraction thereof
5 without rest periods of ten minutes' net rest time and failed to compensate Plaintiff and other
6 aggrieved employees for these missed rest periods.

7 21. Plaintiff is informed and believes, and thereon alleges that Defendants have
8 intentionally and willfully failed to provide Plaintiff and other aggrieved employees with complete
9 and accurate wage statements. The deficiencies include, among other things, the failure to list all
10 hours worked, all gross wages earned, all net wages earned, and the other nine items required by
11 California law. Moreover, Defendants failed to pay sick pay at the regular rate for Plaintiff and
12 other aggrieved employees.

13 22. Plaintiff is informed and believes, and thereon alleges that Defendants failed to
14 reimburse for reasonable and necessary business expenses, including but not limited to steel-toed
15 boots and automobile expenses.

16 23. Plaintiff is informed and believes and thereon alleges that Defendants have
17 intentionally and willfully failed to provide Plaintiff and other aggrieved employees with timely
18 payment of wages upon separation of employment. In violation of the California Labor Code,
19 Plaintiff and these aggrieved employees did not receive payment of all wages including, but not
20 limited to, unpaid minimum and overtime wages, sick pay, meal periods premiums, and rest break
21 premiums within permissible time periods.

22 24. Plaintiff suffered losses as detailed above as a result of these practices and is
23 therefore an aggrieved employee under Labor Code section 2699(c). Plaintiff is informed and
24 believe that because the Defendants used identical procedures for all employees, there are many
25 other aggrieved employees who suffered the above violations including underpayment of wages,
26 non-compliant meal periods and rest breaks, failure to reimburse all reasonable and necessary
27 business expenses, and derivative violations for inaccurate pay and wage statements, and failure
28 to timely pay all wages due to employees who were separated or were terminated from

1 employment during the applicable limitations period, and for which recovery under PAGA is
2 owed.

3 **FIRST CAUSE OF ACTION**

4 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 1194,**
5 **1197.1 AND THE APPLICABLE WAGE ORDER FOR**
6 **FAILURE TO PAY ALL MINIMUM WAGES**

7 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

8 25. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
9 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
10 dated May 19, 2021.

11 26. The Labor Code and the Wage Order provide that in the State of California an
12 employer must pay a minimum wage to an employee, which is eight dollars (\$8.00) per hour for
13 all hours worked effective January 1, 2008, nine dollars (\$9.00) per hour for all hours worked
14 effective July 1, 2014, ten dollars (\$10.00) per hour for all hours worked effective January 1, 2016,
15 ten dollars and fifty cents (\$10.50) per hour for all hours worked effective January 1, 2017, eleven
16 dollars (\$11.00) per hour for all hours worked effective January 1, 2018, twelve dollars (\$12.00)
17 per hour for all hours worked effective January 1, 2019, thirteen dollars (\$13.00) per hour for all
18 hours worked effective January 1, 2020, and fourteen dollars (\$14.00) per hour for all hours
19 worked effective January 1, 2021.

20 27. Labor Code section 1194 states: “Notwithstanding any agreement to work for a
21 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
22 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
23 of the full amount of this minimum wage or overtime compensation, including interest thereon,
24 reasonable attorney’s fees, and costs of suit.”

25 28. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
26 employees of their rightfully earned minimum wage compensation, including overtime
27 compensation at the minimum wage rate, as a direct and proximate result of Defendants’ failure
28 to pay said compensation. During the relevant time period, Defendants paid Plaintiff and the

1 aggrieved employees less than minimum wages when, for example, Defendants required Plaintiff
2 and aggrieved employees to work off-the-clock while undergoing temperature checks and during
3 mandatory drug tests when Plaintiff and aggrieved employees were under Defendants' control.
4 Defendants maintained an unlawful practice of rounding Plaintiff and other aggrieved employees'
5 time records, resulting in a loss of wages. To the extent these hours do not qualify for the payment
6 of overtime or doubletime, Plaintiff and aggrieved employees were not being paid at least
7 minimum wage for their work. Consequently, Plaintiff, on behalf of himself and other aggrieved
8 employees, intends to seek civil penalties pursuant to the PAGA for the alleged violations.

9 29. Labor Code section 1197.1(a)(1) provides that: "For any initial violation that is
10 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
11 period for which the employee is underpaid. This amount shall be in addition to an amount
12 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
13 applicable penalties imposed pursuant to Section 203."

14 30. Labor Code section 1191.1(a)(2) provides that: "For each subsequent violation for
15 the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each
16 pay period for which the employee is underpaid regardless of whether the initial violation is
17 intentionally committed. This amount shall be in addition to an amount sufficient to recover
18 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties
19 imposed pursuant to Section 203.

20 31. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
21 Code section 558: "(a) Any Employers or other person acting on behalf of an Employers who
22 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
23 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
24 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
25 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
26 dollars (\$100) for each underpaid employee for each pay period for which the employee was
27 underpaid."

28 32. Accordingly, the Defendants are subject to assessment of civil penalties pursuant

1 to Labor Code section 1197.1(a) for violations of statutes and subject to civil penalties for
2 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
3 according to proof.

4 33. Plaintiff will seek recovery of attorneys' fees pursuant to Labor Code section
5 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
6 labor laws and applicable regulations is determined to be in the public interest and consistent with
7 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
8 subject to Court approval.

9 **SECOND CAUSE OF ACTION**

10 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 510,**
11 **1194, 1198 AND THE APPLICABLE WAGE ORDER FOR**
12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 34. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
14 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
15 dated May 19, 2021.

16 35. Labor Code section 510(a) states in pertinent part that: "Eight hours of labor
17 constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess
18 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
19 any one workweek shall be compensated at the rate of no less than one and one-half times the
20 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
21 compensated at the rate of no less than twice the regular rate of pay for an employee."

22 36. Labor Code section 1194 states: "Notwithstanding any agreement to work for a
23 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
24 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
25 of the full amount of this minimum wage or overtime compensation, including interest thereon,
26 reasonable attorney's fees, and costs of suit."

27 37. Each of these statutes is listed in Labor Code section 2699.5 as a statute for which
28 violation of has been established to be subject to the default civil penalty provisions in Labor Code

1 section 2699(f)(2). That section provides: “(f) For all provisions of this code except those for
2 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
3 these provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one
4 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
5 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee
6 per pay period for each subsequent violation.”

7 38. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved
8 employees of their rightfully earned overtime compensation as a direct and proximate result of
9 Defendants’ failure to pay said compensation. Consequently, Plaintiff, on behalf of himself and
10 other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged
11 violations.

12 39. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
13 Code section 558: “(a) Any employers or other person acting on behalf of an employer who
14 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
15 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
16 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
17 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
18 dollars (\$100) for each underpaid employee for each pay period for which the employee was
19 underpaid.”

20 40. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
21 to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations
22 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
23 to proof.

24 41. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section
25 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
26 labor laws and applicable regulations is determined to be in the public interest and consistent with
27 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
28 subject to Court approval.

1 **THIRD CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 204, 210 AND THE**
3 **APPLICABLE WAGE ORDER FOR FAILURE TO PAY ALL WAGES**

4 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

5 42. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
6 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
7 dated May 19, 2021.

8 43. Labor Code section 204(a) provides: “All wages, other than those mentioned in
9 Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and
10 payable twice during each calendar month, on days designated in advance by the Employers as the
11 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month
12 shall be paid for between the 16th and the 26th day of the month during which the labor was
13 performed, and labor performed between the 16th and the last day, inclusive, of any calendar
14 month, shall be paid for between the 1st and 10th day of the following month.”

15 44. Labor Code section 210(a) provides: “(a) **In addition to, and entirely**
16 **independent and apart from, any other penalty provided in this article**, every person who fails
17 to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205,
18 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one
19 hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation,
20 or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each
21 employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

22 45. This statute is listed in Labor Code section 2699.5 as a statute for which violation
23 of has been established to be subject to the default civil penalty provisions in Labor Code section
24 2699(f)(2). That section provides: “(f) For all provisions of this code except those for which a civil
25 penalty is specifically provided, there is established a civil penalty for a violation of these
26 provisions, as follows: ... (2) If, at the time of the alleged violation, the person employs one or
27 more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per
28 pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee

per pay period for each subsequent violation.”

46. Here, based on the foregoing, Defendants deprived Plaintiff and similarly aggrieved employees of their rightfully earned compensation, including overtime compensation and hours at the minimum wage rate, as a direct and proximate result of Defendants’ failure to pay said compensation.

47. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged violations.

48. Violations of the Wage Orders are governed by the civil penalty provisions of Labor Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid.”

49. Accordingly, the Defendants are subject to assessment of civil penalties pursuant to Labor Code section 2699.5 for violations of statutes and subject to civil penalties for violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according to proof.

50. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

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1 **FOURTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 226.7, 512**

3 **AND THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE**

4 **TIMELY AND COMPLIANT MEAL PERIODS**

5 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

6 51. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
8 dated May 19, 2021.

9 52. Defendants were required to comply with Labor Code sections 226.7 and 512, and
10 the applicable Wage Order.

11 53. Labor Code section 226.7(b) provides: “An employer shall not require an employee
12 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
13 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
14 Safety and Health Standards Board, or the Division of Occupational Safety and Health.”

15 54. Labor Code section 226.7(c) provides: “If an employer fails to provide an employee
16 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an
17 applicable statute or applicable regulation, standard, or order of the Industrial Welfare
18 Commission, the Occupational Safety and Health Standards Board, or the Division of
19 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
20 at the employee’s regular rate of compensation for each workday that the meal or rest or recovery
21 period is not provided.”

22 55. Labor Code section 512(a) provides: “(a) An Employers shall not employ an
23 employee for a work period of more than five hours per day without providing the employee with
24 a meal period of not less than 30 minutes, except that if the total work period per day of the
25 employee is no more than six hours, the meal period may be waived by mutual consent of both the
26 Employers and employee. An Employers shall not employ an employee for a work period of more
27 than 10 hours per day without providing the employee with a second meal period of not less than
28 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period

1 may be waived by mutual consent of the Employers and the employee only if the first meal period
2 was not waived.”

3 56. Here, based on the foregoing, Defendants employed Plaintiff and aggrieved
4 employees for work periods of more than five hours without a timely, uninterrupted, off-the-clock
5 meal period of not less than thirty minutes for each five-hour period worked, where they were free
6 from employer control, and failed to compensate them for such missed meal periods as required
7 by Labor Code § 226.7 and the applicable Wage Order. Moreover, Defendants failed to provide a
8 second meal period for shifts lasting longer than ten hours. These policies, among others, have
9 resulted in a denial of these employees’ rights to 30-minute meal periods in violation of California
10 law.

11 57. Labor Code sections 226.7 and 512 are statutes specifically listed in Labor Code
12 section 2699.5 as statutes for which violations of have been established to be subject to the default
13 civil penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all
14 provisions of this code except those for which a civil penalty is specifically provided, there is
15 established a civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of
16 the alleged violation, the person employs one or more employees, the civil penalty is one hundred
17 dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred
18 dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

19 58. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
20 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
21 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
22 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
23 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
24 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
25 dollars (\$100) for each underpaid employee for each pay period for which the employee was
26 underpaid.”

27 59. Accordingly, the Defendants are subject to assessment of civil penalties pursuant
28 to Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for

1 violations of the applicable Wage Order as provided by Labor Code section 558(a) in an amount
2 according to proof.

3 60. Plaintiff will seek recovery of attorneys' fees pursuant to Labor Code section
4 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
5 labor laws and applicable regulations is determined to be in the public interest and consistent with
6 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
7 subject to Court approval.

8 **FIFTH CAUSE OF ACTION**

9 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE § 226.7 AND THE**
10 **APPLICABLE WAGE ORDER, FOR FAILURE TO PROVIDE TIMELY**
11 **AND COMPLIANT REST PERIODS**

12 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

13 61. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
14 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
15 dated May 19, 2021.

16 62. Labor Code section 226.7(b) provides: "No employer shall not require an employee
17 to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
18 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational
19 Safety and Health Standards Board, or the Division of Occupational Safety and Health."

20 63. Labor Code section 226.7(c) provides: "If an employer fails to provide an employee
21 a meal or rest or recovery period in accordance with a state law, including, but not limited to, an
22 applicable statute or applicable regulation, standard, or order of the Industrial Welfare
23 Commission, the Occupational Safety and Health Standards Board, or the Division of
24 Occupational Safety and Health, the Employers shall pay the employee one additional hour of pay
25 at the employee's regular rate of compensation for each workday that the meal or rest or recovery
26 period is not provided."

27 64. Here, based on the foregoing, Defendants employed aggrieved employees for work
28 periods of four hours or major fraction thereof without timely, uninterrupted, on-the-clock rest

1 periods of ten minutes where they were free of employer control, and failed to compensate them
2 for such missed rest periods, as required by Labor Code section 226.7 and the applicable Wage
3 Order.

4 65. Labor Code sections 226.7 is a statute specifically listed in Labor Code section
5 2699.5 as statutes for which violations of have been established to be subject to the default civil
6 penalty provisions in Labor Code section 2699(f)(2). That section provides: “(f) For all provisions
7 of this code except those for which a civil penalty is specifically provided, there is established a
8 civil penalty for a violation of these provisions, as follows: ... (2) If, at the time of the alleged
9 violation, the person employs one or more employees, the civil penalty is one hundred dollars
10 (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars
11 (\$200) for each aggrieved employee per pay period for each subsequent violation.”

12 66. Violations of the Wage Orders are governed by the civil penalty provisions of Labor
13 Code section 558: “(a) Any Employers or other person acting on behalf of an Employers who
14 violates, or causes to be violated, a section of this chapter or any provision regulating hours and
15 days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty
16 as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each
17 pay period for which the employee was underpaid; (2) For each subsequent violation, one hundred
18 dollars (\$100) for each underpaid employee for each pay period for which the employee was
19 underpaid.”

20 67. Accordingly, Defendants are subject to assessment of civil penalties pursuant to
21 Labor Code section 2699(f)(2) for violations of statutes and subject to civil penalties for violations
22 of the applicable Wage Order as provided by Labor Code section 558(a) in an amount according
23 to proof.

24 68. Plaintiff will seek recovery of attorneys’ fees pursuant to Labor Code section
25 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California
26 labor laws and applicable regulations is determined to be in the public interest and consistent with
27 the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and
28 subject to Court approval.

1 **SIXTH CAUSE OF ACTION**

2 **PAGA CIVIL PENALTIES FOR LABOR CODE §§ 226(a), 226.3 AND**
3 **THE APPLICABLE WAGE ORDER FOR FAILURE TO PROVIDE ACCURATE AND**
4 **ITEMIZED WAGE STATEMENTS**

5 **(By Plaintiff on behalf of all similarly aggrieved employees and against each Defendant)**

6 69. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
7 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
8 dated May 19, 2021.

9 70. Labor Code section 226(a) provides in pertinent part: “(a) An employer,
10 semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either
11 as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately if
12 wages are paid by personal check or cash, an accurate itemized statement in writing showing (1)
13 gross wages earned, (2) total hours worked by the employee. . . (3) the number of piece-rate units
14 earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
15 provided that all deductions made on written orders of the employee may be aggregated and shown
16 as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
17 paid, . . . (8) the name and address of the legal entity that is the employer . . . and (9) all applicable
18 hourly rates in effect during the pay period and the corresponding number of hours worked at each
19 hourly rate by the employee...”

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

27 72. Here, during Plaintiff and aggrieved employees’ employment with Defendants,
28 Defendants intentionally and knowingly failed to provide Plaintiff and aggrieved employees with

1 timely and accurate wage and hour statements showing, among other things, all hours worked,
2 gross and net wages earned.

3 73. Defendants systemically failed to provide such wage statements with accurate
4 information and engaged in a policy of failing to pay for all hours actually worked.

5 74. The aforementioned conduct violated Labor Code section 226(a). It also violated
6 the applicable Wage Order on required recordkeeping. Finally, the practices described herein
7 violate Labor Code section 226.3, which assigns a specific civil penalty scheme for enforcement
8 actions by the Department of Labor Standards and Enforcement (“DLSE”) or the LWDA.

9 75. Labor Code section 226(a) is a statute listed under Labor Code section 2699.5 for
10 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
11 Code section 2699(f)(2), cited above.

12 76. Labor Code section 226.3 provides an additional recoverable penalty “in the
13 amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and
14 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation...” The
15 civil penalty assessments under Section 226.3 “are **in addition** to any other penalty provided by
16 law.” [Emphasis added.]

17 77. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seeks
18 to recover civil penalties pursuant to the PAGA for the alleged violations in an amount according
19 to proof and subject to Court approval.

20 78. Plaintiff will also seek recovery of attorneys’ fees and litigation expenses pursuant
21 to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent
22 enforcement of California labor laws and applicable regulations is determined to be in the public
23 interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount
24 according to proof and subject to Court approval.

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PAGA CIVIL PENALTIES FOR VIOLATION OF LABOR CODE §§ 246 FOR

FAILURE TO PAY SICK PAY

(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)

79. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated May 19, 2021.

80. California Labor Code § 246(a)(1) provides: “An employee who, on or after July 1, 2015, works in California for the same employer for 30 days or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.”

81. California Labor Code § 246(a)(1) provides: “[A]n employer shall calculate paid sick leave using any of the following calculations: (1) Paid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek; (2) Paid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment; (3) Paid sick time for exempt employees shall be calculated in the same manner as the employer calculates wages for other forms of paid leave time.”

82. Here, based on the foregoing, Defendants deprived Plaintiff and other aggrieved employees of their rightfully earned sick pay compensation as a direct and proximate result of Defendants' failure to pay said compensation. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, intends to seek civil penalties pursuant to the PAGA for the alleged violations.

83. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount

1 according to proof and subject to Court approval.

2 **EIGHTH CAUSE OF ACTION**

3 **PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 201-203**

4 **FOR FAILURE TO TIMELY PAY ALL WAGES DUE TO**

5 **TERMINATED/SEPARATED EMPLOYEES**

6 **(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)**

7 84. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein
8 by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA
9 dated May 19, 2021.

10 85. Labor Code section 201 provides in part: “If an employer discharges an employee,
11 the wages earned and unpaid at the time of discharge are due and payable immediately.”

12 86. Labor Code section 202 provides in part: “ If an employee not having a written
13 contract for a definite period quits his or her employment, his or her wages shall become due and
14 payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice
15 of his or her intention to quit, in which case the employee is entitled to his or her wages at the time
16 of quitting.

17 87. Labor Code section 203 provides: “If an employer willfully fails to pay, without
18 abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any
19 wages of an employee who is discharged or who quits, the wages of the employee shall continue
20 as a penalty from the due date thereof at the same rate until paid or until an action therefor is
21 commenced; but the wages shall not continue for more than 30 days. An employee who secretes
22 or absents themselves or themselves to avoid payment to him or her, or who refuses to receive the
23 payment when fully tendered to him or her, including any penalty then accrued under this section,
24 is not entitled to any benefit under this section for the time during which he or she so avoids
25 payment.”

26 88. Labor Code section 203 is a statute listed under Labor Code section 2699.5 for
27 which civil penalties may be recovered under the default civil penalty scheme outlined in Labor
28 Code section 2699(f)(2), cited above.

89. Here, Plaintiff and other aggrieved employees who were separated or were terminated from their employment within the applicable limitations period were not paid all wages, including meal and rest period premiums, regular, minimum and overtime wages, and sick pay due in a timely manner including as detailed above.

90. Further, as a separate and a non-derivative claim, and upon information and belief, Defendants failed to pay final wages upon termination. For example, Plaintiff's termination effective date according to Defendants' record was April 6, 2021; however, his last wage statement was not issued until April 15, 2021.

91. Consequently, Plaintiff, on behalf of himself and other aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged violations per pay period in an amount according to proof and subject to Court approval.

92. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

NINTH CAUSE OF ACTION

**PAGA CIVIL PENALTIES FOR VIOLATIONS OF LABOR CODE §§ 2800, 2802 AND
THE APPLICABLE WAGE ORDER FOR FAILURE TO REIMBURSE ALL
REASONABLE AND NECESSARY BUSINESS EXPENSES**

(By Plaintiff on behalf of all similarly aggrieved employees against each Defendant)

93. Plaintiff incorporates the preceding paragraphs of this Complaint expressly herein by this reference as if all prior paragraphs were set forth in full, including the Notice to the LWDA dated May 19, 2021.

94. California Labor Code section 2802(a) provides: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions,

1 believed them to be unlawful.”

2 95. California Labor Code section 2802(b) provides: “All awards made by a court or
3 by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures
4 under this section shall carry interest at the same rate as judgments in civil actions. Interest shall
5 accrue from the date on which the employee incurred the necessary expenditure or loss.”

6 96. California Labor Code section 2802(c) provides: “For purposes of this section, the
7 term ‘necessary expenditures or losses shall include all reasonable costs, including, but not limited
8 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

9 97. California Labor Code section 2802(d) provides: “In addition to recovery of
10 penalties under this section in a court action or proceedings pursuant to Section 98, the
11 commissioner may issue a citation against an employer or other person acting on behalf of the
12 employer who violates reimbursement obligations for an amount determined to be due to an
13 employee under this section. The procedures for issuing, contesting, and enforcing judgments for
14 citations or civil penalties issued by the commissioner shall be the same as those set forth in Section
15 1197.1. Amounts recovered pursuant to this section shall be paid to the affected employee.”

16 98. California Labor Code section 1197.1 provides: “(1) For any initial violation that
17 is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay
18 period for which the employee is underpaid. This amount shall be in addition to an amount
19 sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2, and any
20 applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the
21 same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay
22 period for which the employee is underpaid regardless of whether the initial violation is
23 intentionally committed. This amount shall be in addition to liquidated damages pursuant to
24 Section 1194.2, and any applicable penalties imposed pursuant to Section 203.

25 99. Business expenses incurred by employees for work are not waivable, and
26 Defendants are liable if the expenses were required in order to perform work. Here, Plaintiff and
27 other aggrieved employees did not receive adequate reimbursement for necessary business
28 expenses, including but not limited to reimbursement for mileage as well as steel-toed boots.

100. As a result of Defendants' conduct, Plaintiff, on behalf of himself and other aggrieved employees, seeks to recover civil penalties pursuant to the PAGA for the alleged failure to pay business-related expenses, in an amount according to proof and subject to Court approval.

101. Plaintiff will also seek recovery of attorneys' fees and litigation expenses pursuant to Labor Code section 2699(g) and/or Code of Civil Procedure section 1021.5 to the extent enforcement of California labor laws and applicable regulations is determined to be in the public interest and consistent with the Legislative intent stated in Labor Code section 90.5, in an amount according to proof and subject to Court approval.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief as follows:

1. On the First Cause of Action, Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil Penalties pursuant to Labor Code § 1197.1:
 - i. \$100 for each aggrieved employee per pay period for the initial violation; and
 - ii. \$250 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil Penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
2. On the Second Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation; and
 - ii. \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:

- i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
 3. On the Third Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation; and
 - ii. \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
 4. On the Fourth Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation; and
 - ii. \$200 for each aggrieved employee per pay period for each subsequent violation; and
 - b. Civil penalties pursuant to Labor Code § 558:
 - i. \$50 for each underpaid employee for each pay period; and
 - ii. \$100 per employee per pay period for subsequent violations.
 5. On the Fifth Cause of Action, by Plaintiff individually and on behalf of all aggrieved employees against all Defendants, Plaintiff seeks:
 - a. Civil penalties pursuant to Labor Code § 2699(f):
 - i. \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation; and

- 1 b. Civil penalties pursuant to Labor Code § 558:
- 2 i. \$50 for each underpaid employee for each pay period; and
- 3 ii. \$100 per employee per pay period for subsequent violations.
- 4 6. On the Sixth Cause of Action, by Plaintiff individually and on behalf of all
- 5 aggrieved employees against all Defendants, Plaintiff seeks:
- 6 a. Civil penalties pursuant to Labor Code § 226:
- 7 i. \$50 per employee per violation for an initial citation and \$100 per employee
- 8 for each violation for subsequent citations, not to exceed \$4,000 per
- 9 employee; and
- 10 b. Civil penalties pursuant to Labor Code § 226.3:
- 11 i. \$250 per employee per violation for an initial citation; and
- 12 ii. \$1,000 per employee for each violation for subsequent citation;
- 13 7. On the Seventh Cause of Action, by Plaintiff individually and on behalf of all
- 14 aggrieved employees against all Defendants, Plaintiff seeks:
- 15 a. Civil penalties pursuant to Labor Code § 2699(f):
- 16 i. \$100 for each aggrieved employee per pay period for the initial violation;
- 17 and
- 18 ii. \$200 for each aggrieved employee per pay period for each subsequent
- 19 violation; and
- 20 b. Civil penalties pursuant to Labor Code § 558:
- 21 i. \$50 for each underpaid employee for each pay period; and
- 22 ii. \$100 per employee per pay period for subsequent violations.
- 23 8. On the Eighth Cause of Action, by Plaintiff individually and on behalf of all
- 24 aggrieved employees against all Defendants, Plaintiff seeks:
- 25 a. Civil penalties pursuant to Labor Code § 2699(f):
- 26 i. \$100 for each aggrieved employee per pay period for the initial violation;
- 27 and
- 28

1 ii. \$200 for each aggrieved employee per pay period for each subsequent
2 violation.

3 9. On the Ninth Cause of Action, by Plaintiff individually and on behalf of all
4 aggrieved employees against all Defendants, Plaintiff seeks:

5 a. Civil penalties pursuant to Labor Code § 1197.1:

6 i. \$100 for each aggrieved employee per pay period for the initial violation;
7 and

8 ii. \$250 for each aggrieved employee per pay period for each subsequent
9 violation; and

10 b. Civil penalties pursuant to Labor Code § 2699(f):

11 i. \$100 for each aggrieved employee per pay period for the initial violation;
12 and

13 ii. \$200 for each aggrieved employee per pay period for each subsequent
14 violation.

15 10. For reasonable attorneys' fees under the California Labor Code and any other
16 statutes, including California Labor Code of Civil Procedure § 1021.5 and/or California Labor
17 Code § 2699(g);

18 11. For costs of the suit incurred herein;

19 12. For pre- and post-judgment interest at the prevailing statutory rate;

20 13. For civil penalties as described above pursuant to PAGA, 75% of which will be
21 paid to the Labor Workforce Development Agency and 25% of which will be distributed to the
22 aggrieved employees;

23 14. For such equitable relief as the Court may deem just and proper; and

24 15. For such other relief as the Court may deem proper.

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1 DATED: July 26, 2021

LEBE LAW, APLC



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3 By: _____
Jonathan M. Lebe

4 Attorney for Plaintiff DeAndre Moreno, individually
5 and on behalf of all other aggrieved employees
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8

9 **DEMAND FOR JURY TRIAL**

10 Plaintiff demands a trial by jury on all claims so triable.

11 DATED: July 26, 2021

LEBE LAW, APLC



12
13 By: _____
Jonathan M. Lebe

14 Attorney for Plaintiff DeAndre Moreno, individually
15 and on behalf of all other aggrieved employees
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