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6 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
7 **FOR THE COUNTY OF ORANGE**

9 WILLIAM ZELAYA, an individual, on  
behalf of the State of California, as a private  
10 attorney general, and on behalf of all other  
aggrieved employees,

11 Plaintiff,

12 v.

14 AXIOM MATERIALS, INC., a California  
15 Corporation, and DOES 1-20, inclusive,

16 Defendants.  
17

CASE NO. 30-2020-01155811-CU-OE-CXC

**REPRESENTATIVE ACTION COMPLAINT  
FOR PAGA AND OTHER PENALTIES  
(LABOR CODE §§ 2699, ET SEQ.).**

Assigned for all purposes to: Judge Randall J. Sherman  
Dept: CX105

1 Plaintiff WILLIAM ZELAYA (“Plaintiff”), on behalf of himself, the State of California as a  
2 private attorney general, and all other aggrieved employees complains and alleges as follows of  
3 Defendants AXIOM MATERIALS, INC. and DOES 1 through 20, (referred to collectively as  
4 “Defendants”), as follows:

5 **I. INTRODUCTION**

6 1. This is a PAGA representative action brought pursuant to Labor Code § 2698, *et seq.*, on  
7 behalf of the State of California and *all individuals who were employed as hourly, non-exempt,*  
8 *employees by Defendants in California from May 12, 2019 and ongoing* (“Aggrieved Employees”) and  
9 *all Aggrieved Employees who are no longer employed by Defendants* (“Waiting Time Aggrieved  
10 Employees”).

11 2. The “PAGA Period” as used herein is defined as the period from May 12, 2019 and  
12 continuing into the present and ongoing.

13 **II. JURISDICTION AND VENUE**

14 3. This Court has subject matter jurisdiction over any and all causes of action asserted herein  
15 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure §  
16 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of  
17 interest, exceeds \$25,000.00, and because each cause of action asserted arises under the laws of the State  
18 of California or is subject to adjudication in the courts of the State of California.

19 4. This Court has personal jurisdiction over Defendants because Defendants caused injuries  
20 in Orange County and the State of California through their acts, and by their violation of the California  
21 Labor Code and California state common law. Defendants transact millions of dollars of business within  
22 the state of California.

23 5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil  
24 Procedure § 395. Defendants operate within California and do business within Orange County,  
25 California. The unlawful acts alleged herein have a direct effect on Plaintiff and all of Defendants’  
26 employees within Orange County.

27 6. This case should be classified as complex according to California Rules of Court, Rule  
28 3.400 and assigned to a complex litigation judge and department, as it is a representative action, will

1 involve substantial documentary evidence, a large number of witnesses, and is likely to involve  
2 extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and  
3 would require substantial post judgment judicial supervision.

4 **III. THE PARTIES**

5 7. Plaintiff is a California resident and, during the PAGA period, was employed as an  
6 hourly, non-exempt employee of Defendants in California. During the PAGA Period, Defendants'  
7 hourly, non-exempt employees, including Plaintiff during his and their employment, were not paid  
8 minimum and overtime wages for all hours worked; did not receive premium payments for having not  
9 been provided compliant meal and rest periods; were not provided accurate and/or complete wage  
10 statements; did not receive all wages timely; and did not receive all of their wages due upon termination  
11 of employment.

12 8. Plaintiff is informed and believes and thereon alleges that Defendant Axiom Materials,  
13 Inc. is a California Corporation with its facility located in Santa Ana, California in Orange County and  
14 is and/or was the legal employer of Plaintiff and the Aggrieved Employees during the applicable  
15 statutory period.

16 9. The true names and capacities, whether individual, corporate, associate, or otherwise, of  
17 Defendants sued herein as DOES 1-20, inclusive, are currently unknown to Plaintiff, who therefore sues  
18 Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and  
19 believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally  
20 responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to  
21 amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter  
22 as DOES when such identities become known.

23 10. Plaintiff also alleges that he and the Aggrieved Employees worked under the joint  
24 direction and control of Defendants and that Defendants, and each of them, acted in all respects pertinent  
25 to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in  
26 all respect pertinent hereto, and the acts of each Defendant are legally attributable to the other  
27 Defendants. On information and belief, a unity of interest and ownership between each Defendant exists  
28 such that all Defendants acted as a single employer of Plaintiff and other Aggrieved Employees.

1           11.     Furthermore, on information and belief, Defendants are an integrated enterprise and  
2 should be treated as a single employer because Defendants share an interrelation of operations, with  
3 common human resources and personnel policies and shared common offices and facilities. Upon  
4 information and belief, Defendants share common management, a centralized control of labor  
5 operations, and common ownership or financial control.

6           12.     Also, Plaintiff is informed and believes and thereon alleges that the Defendants sued  
7 herein as DOES 1-20 are now and at all material times herein mentioned were the owner/owners of  
8 certain Defendants and the actual employer of Plaintiff and the Aggrieved Employees or, in the  
9 alternative, were individuals employed by Defendants as a managerial and/or supervisory employee  
10 and/or agent. In addition, Plaintiff alleges that at all relevant times herein the Defendants sued herein  
11 as DOES 1-20 had the authority, in the interest of certain Defendants, to exercise independent judgment  
12 to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Plaintiff,  
13 and were in Plaintiff's chain of command at the time of and direct participants in the wrongful conduct  
14 which constitutes the basis of Plaintiff's complaint herein. Plaintiff also alleges that the Defendants  
15 sued herein as DOES 1-20 and certain Defendants are the agents, servants, employees, partners,  
16 affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the  
17 course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification  
18 of each other. Furthermore, in conducting themselves in the manner described herein, the Defendants  
19 sued herein as DOES 1-20 and certain Defendants were acting in active concert with on another such  
20 that the acts of each were fully attributable to the other in all material respects. Plaintiff also alleges that  
21 certain Defendants were merely the alter ego of the Defendants sued herein as DOES 1-20 in that there  
22 existed a unity of interest and ownership such that any separateness between them ceased to exist and  
23 the Defendants sued herein as DOES 1-20 exercised undue dominance, control, influence, and  
24 management over certain Defendants. Plaintiff further alleges that, at all relevant times, certain  
25 Defendants have been inadequately capitalized to conduct business, have failed to follow appropriate  
26 corporate formalities, and have simply been a shell and instrumentality through which the Defendants  
27 sued herein as DOES 1-20 have conducted their personal affairs. Accordingly, the corporate veil should  
28 be pierced, and any liability attached to certain Defendants should be imposed jointly and severally

1 against the Defendants sued herein as DOES 1-20. Adherence to the fiction of the separate existence of  
2 these corporate entities would permit abuse of the corporate privilege, thereby sanctioning fraud and  
3 promoting injustice.

4 **IV. FACTUAL BACKGROUND**

5 13. Plaintiff and Aggrieved Employees are, and were at all times relevant hereto, non-exempt  
6 employees of Defendants within the State of California.

7 14. Labor Code § 1197 states the California requirement that employees must be paid at least  
8 the minimum wage fixed by the Commission, and any payment of less than the minimum wage is  
9 unlawful. Similarly, Labor Code § 1194 entitles “any employee receiving less than the legal minimum  
10 wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC  
11 Wage Order 1-2001 § 4 also obligates employers to pay each employee minimum wages for all hours  
12 worked.

13 15. These minimum wage standards apply to each hour employees worked for which they  
14 were not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an  
15 employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not,  
16 results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135  
17 Cal.App.4th 314, 324.

18 16. Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover  
19 liquidated damages for violations of Labor Code § 1194. Where an employee, such as Plaintiff and  
20 Aggrieved Employees, is not paid for all hours worked under Labor Code § 1194, the employee may  
21 recover minimum wages for the time associated with the overtime for which they received no  
22 compensation. See *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding  
23 that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if  
24 they also showed they were paid less than minimum wage]; accord *Andrade v. Arby’s Rest. Grp., Inc.*  
25 (N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at \*20-21.

26 17. Here, Plaintiff and the Aggrieved Employees frequently took on-duty meal periods or  
27 took meal periods that were less than 30-minutes without being paid for this time due in part to  
28 Defendant’s unlawful donning and doffing policy. Even though Plaintiff and the Aggrieved Employees

1 regularly took on-duty and/or short meal periods, Defendants manipulated their time records to make it  
2 appear as though they had taken a full 30-minute off-duty meal period, even when they did not. Thus,  
3 Plaintiff and the Aggrieved Employees were not paid at least minimum wage for all hours suffered or  
4 permitted to work. Thus, Defendants failed to provide Plaintiff and Aggrieved Employees with  
5 compensation for all hours worked, each are entitled to recover liquidated damages under Labor Code  
6 § 1194.2 through PAGA. Based upon these same factual allegations, Plaintiff also seeks penalties on  
7 behalf of all Aggrieved Employees under Labor Code § 1199.

8 18. Because Defendants failed to provide Plaintiff and the Aggrieved Employees with  
9 compensation for all hours worked, each are entitled to recover liquidated damages under Labor Code  
10 § 1194.2.

11 19. Labor Code section 510 requires an employer to compensate an employee who works  
12 more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8)  
13 hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay  
14 for an employee. Further, Labor Code section 510 obligates employers to compensate employees at no  
15 less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or  
16 more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code  
17 section 1194, Plaintiff and the Aggrieved Employees could not agree to work for a lesser wage. Pursuant  
18 to Section 3 of IWC Wage Order No. 1-2001, employees shall not be employed more than eight (8)  
19 hours in any workday or more than 40 hours in any workweek unless the employee receives one and  
20 one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the  
21 workweek.

22 20. Defendant has maintained a consistent policy of failing to pay overtime wages at the  
23 proper amounts to Plaintiff and Aggrieved Employees. For example, Plaintiff and Aggrieved Employees  
24 are and were paid base hourly wages plus additional compensation for certain tasks and various bonuses.  
25 These additional payments, part commission, part piece- rate compensation, part non-discretionary  
26 bonus, represent and represented a significant portion of Plaintiff's regular rate of pay. Regardless,  
27 Plaintiff and Aggrieved Employees only received overtime compensation based on their base hourly  
28 wage, and not based on their regular rate of pay.

1           21. Further, as Plaintiff and Aggrieved Employees regularly worked shifts in excess of eight  
2 hours, much of the unpaid wages resulting from Defendants’ unlawful donning and doffing policy would  
3 be considered unpaid overtime wages.

4           22. Labor Code § 226.7 provides “an employer shall not require an employee to work during  
5 a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation,  
6 standard, or order of the Industrial Welfare Commission (“IWC”).

7           23. Under IWC Wage Order 1-2001 an employer must authorize and permit all employees  
8 to take ten (10) minute duty free rest periods for every major fraction of four hours worked. *See,*  
9 *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that “during rest periods  
10 employers must relieve employees of all duties and relinquish control over how employees spend their  
11 time.”). In *Augustus*, the court expressly rejected the employer’s assertion that it could provide an on-  
12 duty rest period to employees who worked as security guards and further explained “that employers  
13 [must] relinquish any control over how employees spend their break time, and relieve their employees  
14 of all duties.” *Id.* at 273.

15           24. Here, Defendants failed to provide Plaintiff and Aggrieved Employees with duty-free  
16 rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked.  
17 Specifically, Plaintiff and Aggrieved Employees were required to don and doff protective gear during  
18 their rest periods, their rest periods were regularly on duty and therefore non-compliant. Plaintiff and  
19 Aggrieved Employees are and were not relieved of all duties during their rest periods, as they are and  
20 were required to remain on premises during all rest periods in violation of Labor Code § 226.7, Wage  
21 Order 1-2001 and *Augustus*, 2 Cal. 5th at 269. As a result of its faulty rest period policies, Defendants  
22 regularly and consistently failed to authorize and permit Plaintiff and Aggrieved Employees to take  
23 compliant rest periods.

24           25. The Brinker Court explained in the context of rest breaks that employer liability attaches  
25 from adopting an unlawful policy:

26           An employer is required to authorize and permit the amount of rest break time called for  
27           under the wage order for its industry. If it does not-if, for example, it adopts a uniform  
28           policy authorizing and permitting only one rest break for employees working a seven-  
                  hour shift when two are required-it has violated the wage order and is liable.

1 (*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

2 26. Following *Brinker*, the Courts of Appeal have confirmed that liability for on-duty breaks  
3 arises when an employer adopts a uniform policy that fails to provide off-duty breaks. For example, in  
4 *Faulkinbury vs. Boyd & Associates, Inc.*, the California Court of Appeal applied *Brinker*: “In  
5 *Faulkinbury I*, we concluded that even if [defendant]’s on-duty meal break policy was unlawful,  
6 [defendant] would be liable only when it actually failed to provide a required off-duty meal break.  
7 *Brinker* leads us now to conclude [defendant] would be liable upon a determination that [defendant]’s  
8 uniform on-duty meal break policy was unlawful.” (*Faulkinbury v. Boyd & Associates, Inc.* (2013) 216  
9 Cal.App.4th 220 The Court further explained: “the employer’s liability arises by adopting a uniform  
10 policy that violates the wage and hour laws. Whether or not the employee was able to take the required  
11 break goes to damages...” (*Ibid.*[citations omitted]; see also *Benton v. Telecom Network Specialists,*  
12 *Inc.* (2013) 220 Cal. App. 4th 701, 728.)

13 27. Because Defendants did not authorize or permit Plaintiff and Aggrieved Employees the  
14 opportunity to receive a compliant off-duty rest period, “the court may not conclude employees  
15 voluntarily chose to skip...breaks.” *Alberts v. Aurora Behavioral Health Care*, 241 Cal. App. 4th 388,  
16 410 (2015) (“[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not  
17 conclude employees voluntarily chose to skip those breaks.”); accord *Brinker* 53 Cal. 4th at 1033 (“No  
18 issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is  
19 not authorized, an employee has no opportunity to decline to take it.”).

20 28. In addition to failing to authorize and permit compliant rest periods, Plaintiff and  
21 Aggrieved Employees were not compensated with one (1) hour’s worth of pay at their regular rate of  
22 compensation when they were not provided with a complaint rest period in accordance with Labor Code  
23 § 226.7(b). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have  
24 violated Labor Code § 226.7 and IWC Wage Order No. 1.

25 29. Labor Code § 512 requires employers to provide employees with thirty (30) minute  
26 uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who  
27 works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted  
28 and duty-free meal period. “An on-duty meal period is permitted only when the nature of the work

1 prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid  
2 meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.)

3 30. As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy  
4 that does not provide the amount of meal time called for under the law (as specified in the applicable  
5 Wage Order), “it has violated the wage order and is liable.”

6 31. Defendants violated Labor Code § 512 by failing to advise Plaintiff and Aggrieved  
7 Employees of their right to receive thirty (30) minute uninterrupted meal periods within the first five  
8 hours of the employee’s shift or their right to receive a second meal period on days where they worked  
9 more than ten (10) hours.

10 32. Specifically, Defendants violated Labor Code § 512 and the IWC Wage Order by not  
11 providing Plaintiff and Aggrieved Employees 30-minute meal periods as required.

12 33. Additionally, Plaintiff and Aggrieved Employees regularly took short and/or late meal  
13 periods due to the demands of the job.

14 34. Further, Plaintiff and Aggrieved Employees’ meal periods were not off-duty due to  
15 Defendants’ unlawful donning and doffing policy. Plaintiff and Aggrieved Employees cannot perform  
16 their work for Defendants without donning appropriate safety gear. Rather than allowing Plaintiff and  
17 Aggrieved Employees to take a full 30-minute off-duty meal period, Defendants require Plaintiff and  
18 Aggrieved Employees to don and doff their protective gear while clocked out for their meal periods.  
19 Although Plaintiff and Aggrieved Employees regularly take short, on-duty, and/or late meal periods,  
20 Defendants fraudulently change Plaintiff and Aggrieved Employees’ time records to create the  
21 appearance that they took compliant meal periods. As a result, Plaintiff and Aggrieved Employees are  
22 not provided lawful meal periods.

23 35. Defendants also failed to pay Plaintiff and Aggrieved Employees meal period premiums  
24 for each workday that the employees did not receive a compliant meal period.

25 36. Labor Code § 204 expressly requires that “[a]ll wages...earned by any person in any  
26 employment are due and payable twice during each calendar month, on days designated in advance by  
27 the employer as the regular paydays.” Pursuant to Labor Code § 204(d), these requirements are “deemed  
28

1 satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid  
2 not more than seven calendar days following the close of the payroll period.

3 37. Due to Defendants' failure to pay Plaintiff and Aggrieved Employees for all hours  
4 worked, and all meal and rest period premium, Defendants failed to timely pay Plaintiff and Aggrieved  
5 Employees within seven (7) days of the close of the payroll period in accordance with Labor Code §  
6 204 on a regular and consistent basis. See *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS  
7 58299, 2016 WL 1734010, at \*3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest  
8 period premiums can support claims under Labor Code §§ 203 and 204).

9 38. As a result of Defendants failure to pay Plaintiff and Aggrieved Employees for all hours  
10 worked, for minimum wages, and for minimum wages at the correct legal rate, and meal and rest period  
11 premiums for missed meal and rest periods, Defendants violated Labor Code § 203. Labor Code § 203  
12 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who  
13 quits, the wages of the employee shall continue as a penalty. . ." for up to 30 days. Lab. Code § 203;  
14 *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

15 39. Due to Defendants' faulty policies described above, Plaintiff and Aggrieved Employees  
16 whose employment with Defendants concluded were not compensated for each and every hour worked  
17 or at the appropriate rate. Additionally, Defendants have failed to pay Plaintiff and Aggrieved  
18 Employees all hours worked (including at the proper rates), meal period premiums and rest period  
19 premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their  
20 resignation and have failed to pay those sums for thirty (30) days thereafter.

21 40. Labor Code § 226(a) requires an employer to provide its employees with itemized wage  
22 statements accurately stating (1) gross wages earned, (2) total hours worked by the employee, (3) the  
23 number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate  
24 basis, (4) all deductions, provided that all deductions made on written orders of the employee may be  
25 aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which  
26 the employee is paid, (7) the name of the employee and only the last four digits of his or her social  
27 security number or an employee identification number other than a social security number, (8) the name  
28 and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during

1 the pay period and the corresponding number of hours worked at each hourly rate by the employee.

2 41. Specifically, due to Defendants' failure to provide Plaintiff and Aggrieved Employees  
3 with compensation for all hours worked, pay all overtime wages at the proper rates, lawful off-duty rest  
4 periods, and lawful timely and uninterrupted off-duty meal periods, the wage statements issued do not  
5 indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the  
6 applicable hourly rates in effect during the pay period and the corresponding number of hours worked  
7 at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Thus, Plaintiff is an aggrieved  
8 employee within the meaning of PAGA and Defendants have violated Labor Code § 226(a)(1), (2), (5),  
9 and (9) with respect to Plaintiff and Aggrieved Employees.

10 42. In addition to violating Labor Code § 226(a), Defendants also knowingly and  
11 intentionally failed to provide Plaintiff and the Aggrieved Employees with accurate itemized wage  
12 statements in violation of Labor Code § 226(e). Defendants undeniably knew that it was not providing  
13 Plaintiff and the Aggrieved Employees with wage statements required by California law. *See Garnett v.*  
14 *ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly  
15 and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was not providing  
16 total hours worked to plaintiff or other employees paid on commission” even though it believed that  
17 employees paid solely on commission or commission and salary “are exempt and therefore we do not  
18 record hours on a wage statement.”).

19 43. Lastly, Defendants violated Labor Codes §§ 201-203 by willfully failing to pay any  
20 wages of an employee who is discharged or who quit. Due to Defendants' faulty policies, Plaintiff and  
21 the Aggrieved Employees were not compensated for each and every hour worked or at the appropriate  
22 rate. Additionally, Defendants failed to pay the Aggrieved Employees for meal and rest period  
23 premiums, as well as minimum and overtime wages at the proper rates, whose sums were certain, at the  
24 time of termination or within seventy-two (72) hours of their resignation and have failed to pay those  
25 sums for thirty (30) days thereafter.

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1 **FIRST CAUSE OF ACTION**

2 **PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ.***  
3 **[For Violations of Labor Code §§ 201, 202, 203, 204, 221, 223, 226, 226.3, 226.7, 510,**  
4 **512, 1194, 1194.2, 1197, 1197.1, 1198, and; Wage Order 1-2001]**  
5 **On Behalf of Plaintiff and the Aggrieved Employees Against All Defendants**

6 44. Plaintiff re-alleges and incorporates by reference the allegations contained in the  
7 paragraphs above, as though fully set forth herein.

8 45. Defendants' above-described violations of Labor Code §§ 201, 202, 203, 204, 221, 223,  
9 226, 226.3, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198, as well as IWC Wage Order 1-2001 have  
10 harmed the Aggrieved Employees during the PAGA Period.

11 46. Under Labor Code §§ 2699(f)(2) and 2699.5, *for each such violation*, Plaintiff and all  
12 other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial, in  
13 amounts amounting to no less than the following:

14 \$100 for the initial violation per employee per pay period; and

15 \$200 for each subsequent violation per employee per pay period.

16 These penalties will be allocated 75% to the Labor Workforce Development Agency and 25%  
17 to the affected employees.

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

26 48. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of  
27 Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per  
28 employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each  
violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction  
statement or fails to keep the required in subdivision (a) of Section 226." As a result of Defendants'

1 failure to provide Plaintiff and all Aggrieved Employees with accurate itemized wage statements in  
2 compliance with Labor Code § 226(a), Defendants are liable to them for the additional PAGA civil  
3 penalties pursuant Labor Code § 226.3.

4 49. Furthermore, Plaintiff, as an Aggrieved Employee, need not demonstrate or prove that  
5 Defendants' conduct in refusing to provide accurate and itemized wage statements was knowing,  
6 intentional, or willful. *Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788, ("Consistent  
7 with the PAGA statutory framework and the plain language and legislative history of section 226(e), we  
8 hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to  
9 satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)."); see *Willner v.*  
10 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all  
11 [plaintiff] needs to establish is a violation of section 226(a), which she has done, as discussed above.");  
12 *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes  
13 of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish  
14 a Section 226(e) injury."); *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at \*28 (C.D.  
15 Cal. July 3, 2013) ("Plaintiff do not need to establish a Cal. Lab. Code § 226(e) injury to recover  
16 penalties under § 2699(f) of PAGA.").

17 50. Labor Code § 1198 states, "The maximum hours of work and the standard conditions of  
18 labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor  
19 for employees. The employment of any employee for longer hours than those fixed by the order or under  
20 conditions of labor prohibited by the order is unlawful." To that end, any violation of the Wage Order  
21 is also a violation of Labor Code § 1198.

22 51. Plaintiff fully and completely exhausted his administrative remedies under PAGA prior  
23 to proceeding with this action. On May 12, 2020, Plaintiff filed his PAGA Notice online with the Labor  
24 Workforce Development Agency ("LWDA") and sent a letter by certified mail to all known  
25 Defendant(s) setting forth the facts and theories of the violations alleged as prescribed by Labor Code §  
26 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular  
27 mail. Pursuant to Labor Code § 2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA  
28 evidencing its intention to investigate within sixty-five (65) calendar days of the postmark date of the

1 PAGA notice. Plaintiff is therefore, entitled to commence and proceed with a civil action pursuant to  
2 Labor Code § 2699.

3 **V. RELIEF REQUESTED**

4 Wherefore, Plaintiff, on behalf of himself and the Aggrieved Employees, prays for judgment  
5 against Defendants as follows:

6 a. A civil penalty against Defendants, in the amount of \$100 for the initial violation and  
7 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for  
8 Plaintiff and for the Aggrieved Employees during all of the pay periods in the PAGA Period;

9 b. A civil penalty against Defendants, in the amount of \$100 for the initial violation and  
10 \$200 for each subsequent violation as specified in sections 210 and 2699(f)(2) and of the California  
11 Labor Code for Plaintiff and for the Aggrieved Employees during all of the pay periods in the PAGA  
12 Period in addition to all other penalties available under Labor Code section 210;

13 c. All penalties available under Section 226.3 of the California Labor Code and the Labor  
14 Code Private Attorneys General Act of 2004;

15 d. All penalties available under Labor Code Private Attorneys General Act of 2004;

16 e. For general damages, according to proof;

17 f. For an award of interest, including prejudgment interest at the legal rate;

18 g. For statutory damages, including reasonable attorneys' fees and costs of suit.

19 h. For all other relief described herein;

20 i. All other relief as this Court deems proper.

21  
22 Respectfully submitted,

23 MELMED LAW GROUP P.C.

24  
25 Dated: August 18, 2020

26 \_\_\_\_\_  
Jonathan Melmed, Esq.  
*Attorney for Plaintiff and Aggrieved Employees*