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**ENDORSED
FILED
ALAMEDA COUNTY**

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CLERK OF THE SUPERIOR COURT

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF ALAMEDA

JAMES SOUZA, on behalf of himself and all others similarly situated,

Plaintiffs,

vs.

KAG WEST, LLC, a California limited liability company; and DOES 1 through 100, inclusive,

Defendants.

CASE NO. **RG16814354**

COMPLAINT FOR:

- 1. CIVIL PENALTIES UNDER LABOR CODE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE 2698, ET. SEQ**

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff JAMES SOUZA (“Plaintiff”), an individual, hereby files this Complaint against
2 defendant KAG WEST, LLC, a California limited liability company and Does 1 to 100 (hereinafter
3 collectively, “Defendant”). Plaintiff is informed and believes and on the basis of that information
4 and belief alleges as follows:

5 **INTRODUCTION**

6 1. This lawsuit challenges the Defendant’s employment practices with respect to its
7 Drivers employed in the State of California. Defendant operates a transportation company which is
8 primarily responsible for delivering petroleum based products throughout California. The
9 “aggrieved” employees Plaintiff seeks to represent on behalf of the state of California are California
10 based truck drivers which have been subjected to at least one of the violations described herein.
11 Defendant fails to pay for all straight time hours worked by Drivers, requiring them to perform
12 certain pre-trip and post-trip duties off-the-clock. Also Defendant fails to provide legally compliant,
13 work free meal and rest breaks, fails to timely compensate employees for all wages earned, and fails
14 to properly and accurately report wages earned, hours worked, and wage rates, among other
15 violations.

16 2. At all times relevant hereto, and with certain defined exceptions, Defendant’s
17 compensation scheme did not fully compensate Plaintiff with at least minimum wages and/or
18 designated rates for all hours worked.

19 3. At all times relevant hereto, and as a matter of policy and/or practice, Defendant
20 failed to provide Plaintiff with adequate off-duty meal periods and meal period compensation in
21 violation of Labor Code sections 226.7, 512, and 516 and IWC Wage Order No. 9.

22 4. At all times relevant hereto, and as a matter of policy and/or practice, Defendant
23 failed to provide Plaintiff with paid rest periods and rest period compensation in violation of Labor
24 Code sections 226.7 and 516 and IWC Wage Order No. 9.

25 5. At all times relevant hereto, and as a matter of policy and/or practice, Defendant
26 knowingly and intentionally provided Plaintiff with wage statements that, among others, do not
27 accurately show all wages earned, all hours worked, or all applicable rates.

28 6. At all times relevant hereto, and as a matter of policy and/or practice, Defendant

1 failed to maintain accurate documentation of the actual hours worked each day by Plaintiff, all
2 wages earned and meal breaks taken in violation of Labor Code sections 1174 and IWC Wage Order
3 No. 9, section 7.

4 7. At all times relevant hereto, and as a matter of policy and/or practice, Defendant
5 failed to pay Plaintiff all wages due, but not limited to, payment of wages for off-the-clock work,
6 and missed meal and rest periods compensation.

7 8. In this case, Plaintiff seeks penalties established by Labor Code section 2699, the
8 Private Attorney Generals Act (PAGA), against Defendant for its unlawful employment practices.

9 **PARTIES**

10 ***Plaintiff James Souza***

11 9. Plaintiff James Souza is an individual over the age of eighteen (18) and is now and/or
12 at all relevant times mentioned in this Complaint was a resident and domiciliary of the State of
13 California. Mr. Souza was employed by Defendant from on or about April 16, 2012 to April 15,
14 2016. Within the timeframe of May 4, 2015 to May 4, 2016 (the "Relevant Time Period"), Mr.
15 Souza worked for Defendant at Defendant's facilities in both Martinez, California and Fresno,
16 California. Mr. Souza is bringing this lawsuit in a representative capacity as an aggrieved employee
17 of Defendant on behalf of the state of California. He is not asserting any individual claims.

18 ***Defendant KAG West, LLC***

19 10. Plaintiff is informed and believes and based thereon alleges that Defendant KAG
20 West, LLC is now and/or all times mentioned in this Complaint a California limited liability
21 company licensed to do business and actually doing business in the State of California.

22 11. Plaintiff is informed and believes and based thereon alleges that Defendant is now
23 and/or at all times mentioned in this Complaint the owner and operator of a business with numerous
24 locations throughout the State of California, including in Alameda County. Among other things,
25 Defendant provides services for the pick-up, transportation and delivery of fuel and other oil based
26 products to the appropriate destinations within the state of California.

27 12. Plaintiff is informed and believes and based thereon alleges that Defendant maintains
28 and operates facilities in Martinez, California and elsewhere including in Alameda County and that

1 some aggrieved employee Drivers reside in Alameda County.

2 ***Defendants Does 1 through 10, Inclusive***

3 13. DOES 1 through 10 inclusive are now and/or at all times mentioned in this Complaint
4 were, licensed to do business and/or actually doing business in the State of California. Plaintiff does
5 not know the true names or capacities, whether individual, partner, or corporate, of DOES 1 through
6 10, inclusive and for that reason, DOES 1 through 10 are sued under such fictitious names pursuant
7 to California Code of Civil Procedure, section 474. Plaintiff will seek leave of court to amend this
8 Complaint to allege such names and capacities as soon as they are ascertained. DOES 1 through 5
9 are believed to be business entities who were also co-employers of the Plaintiff and the putative class
10 herein.

11 ***All Defendants***

12 14. Plaintiff is informed and believes and based thereon alleges that at all times herein
13 mentioned, all Defendant, and each of them, were and are the agents, servants, employees, joint
14 venturers, and/or partners of each of the other Defendants, and were, at all such times, acting within
15 the course and scope of said employment and/or agency; furthermore, that each and every Defendant
16 herein, while acting as a high corporate officer, director and/or managing agent, principal and/or
17 employer, expressly directed, consented to, approved, affirmed and ratified each and every action
18 taken by the other co-Defendants, as herein alleged and was responsible in whole or in part for the
19 matters referred to herein.

20 15. Plaintiff is informed and believes and based thereon alleges that at all times herein
21 mentioned, Defendant, and each of them, proximately caused Plaintiff, all others similarly situated
22 and the general public to be subjected to the unlawful practices, wrongs, complaints, injuries and/or
23 damages alleged in this Complaint.

24 16. Plaintiff is informed and believes and based thereon alleges that Defendant, and each
25 of them, are now and/or at all times mentioned in this Complaint were members of and/or engaged in
26 a joint venture, partnership and common enterprise, and were acting within the course and scope of,
27 and in pursuit of said joint venture, partnership and common enterprise and, as such were co-
28 employers of the Plaintiff and the putative class herein.

1 17. Plaintiff is informed and believes and based thereon alleges that Defendant, and each
2 of them, at all times mentioned in this Complaint, concurred with, contributed to, approved of, aided
3 and abetted, condoned and/or otherwise ratified, the various acts and omissions of each and every
4 one of the other Defendants in proximately causing the injuries and/or damages alleged in this
5 Complaint.

6 **JURISDICTION AND VENUE**

7 18. This Court has jurisdiction over this matter, and under Code of Civil Procedure
8 section 395, venue is proper in that Plaintiff's injuries were incurred, in part, within Alameda
9 County; the actions giving rise to Plaintiff's Complaint and those of others arose in whole or in part
10 within Alameda County; and Defendant operates a terminal in Alameda County. Moreover, there are
11 aggrieved employee Drivers who reside in Alameda County and some of the harms occurred in
12 Alameda County. Plaintiff does not seek more than seventy-five thousand dollars (\$75,000) and
13 waives seeking more than seventy-five thousand dollars (\$75,000), including attorney's fees but
14 excluding costs and interest, as to his share or portion of penalties or any other recovery with respect
15 to the violations alleged herein against Defendant. This case also raises no federal questions.

16 **FACTUAL ALLEGATIONS**

17 ***Background***

18 19. Plaintiff is a former employee for Defendant and worked as a delivery truck driver
19 who worked out of Defendant's Martinez and Fresno facilities. From on or about April 16, 2012 to
20 June 30, 2015, Plaintiff was based out of Defendant's Martinez facility. From July 1, 2015 to when
21 he left the company on April 15, 2016, Plaintiff worked for Defendant out of its Fresno facility.
22 Throughout his employment with Defendant, Plaintiff, like other Drivers, was compensated on an
23 hourly basis

24 20. The primary work duties of Plaintiff and those similarly situated include, among
25 others, the pick-up, transportation and delivery of fuel and other oil based products to the appropriate
26 destinations within the state of California.

27 21. Additional job duties include, but are not limited to, arriving before their scheduled
28 start of shift time to obtain their assignments in the morning and get to their trucks, to complete and

1 sort necessary paperwork in connection with the trips they perform on a daily basis, to be ready and
2 available to answer calls from Defendant's dispatchers and managers at any time before, during, and
3 after their shifts.

4 ***Defendant's Failure to Pay Minimum Wages and Designated Rates***

5 22. IWC Wage Order, number 9 defines "hours worked" to mean "the time during which
6 an employee is subject to the control of an employer, and includes all the time the employee is
7 suffered or permitted to work, whether or not required to do so."

8 23. Labor Code section 1182.12 and IWC Wage Order, number 9, section 4 formerly
9 provided that on and after January 1, 2008, the minimum wage shall be not less than eight dollars
10 (\$8.00) per hour.

11 24. Labor Code section 1182.12 and IWC Wage Order, number 9, section 4 provide that
12 on and after July 1, 2014, the minimum wage for all industries shall be not less than nine dollars (\$9)
13 per hour, and on and after January 1, 2016, the minimum wage for all industries shall be not less
14 than ten dollars (\$10) per hour.

15 25. Labor Code section 1194(a) provides in relevant part: "Notwithstanding any
16 agreement to work for a lesser wage, any employee receiving less than the legal minimum wage [] is
17 entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage [],
18 including interest thereon, reasonable attorney's fees, and costs of suit."

19 26. Labor Code section 1194.2(a) provides in relevant part: "In any action under Section
20 1193.6 or Section 1194 to recover wages because of the payment of a wage less than the minimum
21 wage fixed by an order of the commission, an employee shall be entitled to recover liquidated
22 damages in an amount equal to the wages unlawfully unpaid and interest thereon."

23 27. Labor Code section 1197 provides: "The minimum wage for employees fixed by the
24 commission is the minimum wage to be paid to employees, and the payment of a less wage than the
25 minimum so fixed is unlawful."

26 28. Drivers, including Plaintiff, are paid on an hourly-basis for their time spent picking
27 up and transporting fuel and other oil based products to the appropriate destinations within
28 California. Hours worked include, but are not limited to, all hours that an employee is permitted or

1 suffered to work including, but not limited to, off-the-clock work that an employer either knew or
2 should have known that an employee was performing.

3 29. As a matter of policy and/or practice, Defendant routinely suffered or permitted its
4 Drivers to work portions of the day during which they were subject to Defendant's control, but
5 Defendant failed to compensate them.

6 30. Throughout the Relevant Time Period, Defendant routinely required its Drivers,
7 including Plaintiff, to perform work before and after their scheduled shifts as well as during meal
8 and rest breaks. Such work includes but is not limited to the time it takes Drivers to procure their
9 assignments in the morning and get to their trucks. In addition, Drivers, including Plaintiff, are not
10 paid for any delays caused by their trucks not being ready when they arrive for their shift.
11 Concerning post-trip work, Drivers and Plaintiff are not compensated for the time worked after they
12 return their trucks to the terminal and turn off the engine. This is so despite the fact that Drivers,
13 including Plaintiff, must wait anywhere from 15 to 30 minutes to obtain necessary paperwork and
14 thereafter sort the paperwork (sorting white and green copies). Drivers, including Plaintiff, are also
15 not compensated for completing paperwork at the conclusion of their shifts. As a consequence of
16 KAG WEST, LLC'S uniform policies and/or practices of failing to compensate Drivers, including
17 Plaintiff, for all of their time worked, Drivers, including Plaintiff, were not paid at least minimum
18 wages and/or designated rates for all of the hours that they were subject to Defendant's control.

19 31. Additionally, Defendant did not maintain adequate and accurate records of all wages
20 earned, hours worked, and meal and rest breaks taken.

21 ***Defendant's Failure to Provide Meal Breaks***

22 32. Plaintiff did not waive his meal periods with Defendant, by mutual consent or
23 otherwise. Plaintiff did not enter into any written agreement with Defendant agreeing to an on-the-
24 job paid meal period. Nevertheless, Defendant implemented a uniform policy and procedure in
25 which Drivers, including Plaintiff, were not provided with legally compliant duty-free meal periods.

26 33. Plaintiff is informed and believes and based thereon alleges that Defendant failed to
27 effectively communicate California meal period requirements to their Drivers including Plaintiff.
28 This is because Defendant only observes federal Hours of Service ("HOS") requirements and

1 instructs Drivers to take a meal period before the conclusion of the eighth hour instead of the fifth.

2 34. Specifically, throughout the Relevant Time Period, Defendant regularly:

- 3 a. Failed to provide Plaintiff with a first meal period of not less than thirty (30)
4 minutes during which he was relieved of all duty before working more than five
5 (5) hours;
- 6 b. Failed to provide Plaintiff with a second meal period of not less than thirty (30)
7 minutes during which they are relieved of all duty before working more than ten
8 (10) hours per day; and
- 9 c. Failed to pay Plaintiff and the members of the putative class one hour of pay at
10 their regular rate of compensation for each workday that a meal period was not
11 provided.

12 ***Defendant's Failure to Provide Rest Breaks***

13 35. At all times relevant hereto, Labor Code section 226.7 and IWC Wage Order, number
14 9, section 12 required employers to authorize, permit, and provide a ten (10) minute paid rest for
15 each four (4) hours of work, during which employees are relieved of all duty.

16 36. At all times relevant hereto, Labor Code Section 226.7(b) and IWC Wage Order,
17 number 9, section 12 required employers to pay one hour of additional pay at the regular rate of
18 compensation for each employee and each workday that a proper rest period is not provided.

19 37. Plaintiff is informed and believes and based thereon alleges that Defendant had a
20 policy of disallowing rest breaks for Plaintiff and other Drivers. As a result, while working for
21 Defendant, Plaintiff and other Drivers have been unable to take paid ten (10) minute paid rest
22 periods for every four (4) hours of work, or major fraction thereof, during which they are relieved of
23 all work-related duties. Defendant also overloads Drivers' schedules with deliveries. Therefore,
24 even if Drivers were permitted to take rest periods, the amount of work they have dissuades and
25 discourages them from doing so as taking rest periods will cause the Drivers to fall behind on
26 deliveries and could result in discipline.

27 38. Consequently, throughout the Relevant Time Period, Plaintiff and other similarly
28 situated Drivers were routinely denied the rest breaks they were entitled to under California law.

1 39. Specifically, throughout the Relevant Time Period, Defendant regularly:

- 2 a. Failed to provide paid rest periods of ten (10) minutes during which Plaintiff and the
3 members of the putative class were relieved of all duty for each four (4) hours of
4 work;
- 5 b. Failed to compensate Plaintiff and the members of the putative class for break time
6 when breaks were taken; and
- 7 c. Failed to pay Plaintiff and the members of the putative class one (1) hour of pay at
8 their regular rate of compensation for each workday that a rest period was not
9 permitted.

10 ***Defendant's Failure to Reimburse Drivers, Including Plaintiff, For Necessary Business***

11 ***Expenditures***

12 40. Defendant also failed to reimburse Plaintiff and Defendant's Drivers for reasonable
13 business expenses related to cell phone use. Drivers like Plaintiff were required to use their personal
14 cell phones for work. Defendant's managers would call Drivers like Plaintiff on their personal cell
15 phones to discuss driving routes, deliveries, and other work related issues during their daily routes.
16 However, Plaintiff and Drivers are not compensated for any expenses associated with using their cell
17 phones for work.

18 ***Defendant's Failure to Provide Accurate, Itemized Wage Statements***

19 41. At all times relevant hereto, Labor Code section 226 and IWC Wage Order, number
20 9, section 7 required employers to maintain adequate employment records and provide employees
21 with accurate itemized wage statements showing gross wages, total hours worked, all applicable
22 hourly rates worked during each pay period, the corresponding number of hours worked at each
23 hourly rate, and meal breaks taken.

24 42. Wage statements provided to Drivers including Plaintiff by Defendant do not
25 accurately show all wages earned, all hours worked, or all applicable rates, in violation of the Labor
26 Code section 226, IWC Wage Order number 9, section 7, and the UCL.

27 43. Moreover, Defendant did not maintain adequate records of all wages earned, hours
28 worked and breaks taken.

1 ***Exhaustion of Administrative Remedies***

2 44. Plaintiff has complied with the procedures for bringing suit specified in California
3 Labor Code Section 2699.3. By letter dated March 29, 2016, Plaintiff, on behalf of himself and the
4 other aggrieved employees, gave written notice by certified mail to the Labor and Workforce
5 Development Agency (“LWDA”) and Defendant of the specific provisions of the California Labor
6 Code alleged to have been violated, including the facts and theories to support the alleged violations.

7 45. Because the LWDA did not provide notice within 33 days of the postmark of
8 Plaintiff’s notice advising whether or not the agency intended to investigate his claims, Plaintiff
9 alleges that he is entitled to commence his civil action pursuant to Labor Code Section 2699. Labor
10 Code Section 2699.3(2)(A).

11 46. Plaintiff and the other aggrieved employees have therefore exhausted all
12 administrative procedures required of them under Labor Code Sections 2698, 2699, and 2699.3, and
13 as a result, are entitled as a matter of right in bringing forward this cause of action.

14 **FIRST CAUSE OF ACTION**

15 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

16 **(On Behalf of Plaintiff and the Putative Class Against Defendant)**

17 **Labor Code sections 201-203, 204, 210, 216, 223, 225.5, 226, 226.3, 226.7, 512, 558, 1174,**
18 **1174.5, 1182, 1194, 1194.2, 1197, 1197.1, 2803, 2968, et seq.**

19 47. Plaintiff incorporates by reference the allegations set forth above. Plaintiff has
20 complied with the procedures for bringing suit specified in California Labor Code Section 2699.3.

21 48. This action arises out of the allegedly unlawful labor practices of Defendant in
22 California. Through this private attorneys general action, Plaintiff represents himself, and other
23 aggrieved employees of Defendant that were in California, against whom Defendant has allegedly
24 committed labor law violations alleged herein. As a result of the allegedly unlawful conduct
25 described herein, Plaintiff now seeks to recover civil penalties, including the value of unpaid wages,
26 attorneys’ fees and costs, pursuant to the Labor Code Private Attorneys General Act of 2004, Labor
27 Code Sections 558 and 2698, *et seq.*

28 49. Labor Code Section 1198 makes it unlawful for an employer to employ an employee

1 under conditions that violate the applicable Wage Order.

2 50. Plaintiff is informed and believes that throughout the Relevant Time Period,
3 Defendant has applied centrally devised policies and practices to Plaintiff and the other aggrieved
4 employees with respect to wages, hours, and working conditions.

5 **Failure to Pay Minimum Wages and Designated Rates**

6 51. At all relevant times, California Labor Code sections 1194, 1197 and 1197.1 provide
7 that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to
8 employees and the payment of a wage less than the minimum so fixed is unlawful. Additionally,
9 Code Section 1198 makes it unlawful for an employer to employ an employee under conditions that
10 violate the applicable Wage Order.

11 52. Where any statute or contract requires an employer to maintain the designated wage
12 scale, Labor Code Section 223 makes it unlawful for an employer to secretly pay a lower wage while
13 purporting to pay the wage designated by statute or by contract.

14 53. At all relevant times, Defendant maintained a policy and practice of requiring
15 Plaintiff and the other aggrieved employees to remain under Defendant's control without paying
16 therefore, which resulted in them earning less than the legal minimum wage in the State of
17 California for all hours worked. At all relevant times, Defendant maintained a policy and practice of
18 requiring Plaintiff and the other aggrieved employees to remain under Defendant's control without
19 paying therefor, which resulted in them earning less than the legal minimum wage in the State of
20 California for all hours worked. At all relevant times, Defendant maintained a policy and practice of
21 failing to pay all wages and compensation earned by Plaintiff and other aggrieved employees within
22 the time limits prescribed by California Labor Code section 204.

23 54. Defendant's failure to pay Plaintiff and other aggrieved employees minimum wages
24 and designated rates violates California Labor Code sections 216, 223, 1182.12, 1194, and 1197.
25 Plaintiff and other aggrieved employees are entitled to recover civil penalties pursuant to sections
26 1197.1, 225.5 and 2699(a), (f), and (g).

27 **Failure to Provide Meal and Rest Breaks**

28 55. Labor Code Section 512 and Section 11 of the Wage Order impose an affirmative

1 obligation on employers to provide non-exempt employees with uninterrupted, duty-free, meal
2 periods of at least thirty (30) minutes for each work period of five (5) or more hours, and to provide
3 them with two uninterrupted, duty-free, meal periods of at least thirty (30) minutes for each work
4 period of more than ten (10) hours.

5 56. Labor Code Section 226.7 and Section 11 of the Wage Order prohibit employers from
6 requiring employees to work during required meal periods and require employers to pay non-exempt
7 employees an additional hour of premium wages on each workday that the employee is not provided
8 with a required meal period.

9 57. At all relevant times during the applicable limitations period, Defendant failed to
10 provide Plaintiff, and the other aggrieved employees, with an uninterrupted meal period of at least
11 thirty (30) minutes on each day that they worked five (5) or more hours, by the conclusion of their
12 fifth hour of work, as required by Labor Code Section 512 and the Wage Order. Defendant failed to
13 provide meal breaks in compliance with California law because Defendant only had a policy of
14 requiring Plaintiff and the other aggrieved employees to take their meal breaks by the conclusion of
15 their eighth hour of work. Moreover, and separate from Defendant's flawed policy, the schedules
16 and job duties that Defendant imposed upon Plaintiff and the other aggrieved employees practically
17 prevented them from taking a meal break before the conclusion of their fifth hour of work. Finally,
18 to the extent that Plaintiff and the other aggrieved employees were able to take a meal break, they
19 would not be relieved of all of their work duties as KAG WEST, LLC required them to stay near
20 their trucks at all times during any breaks, in order to secure the vehicles and their contents from
21 theft or vandalism.

22 58. At relevant times during the applicable limitations period, Defendant failed to provide
23 Plaintiff with two uninterrupted meal periods of at least thirty (30) minutes on each day that he
24 worked ten (10) or more hours, as required by Labor Code Section 512 and the Wage Order, as a
25 result of duties and schedules that did not permit him to take all legally required meal periods, and as
26 a result of Defendant's policy and practice of only allowing a single (flawed) meal break per day,
27 regardless of whether or not Plaintiff worked a shift of over 10 hours in length. Additionally,
28 Defendant failed to provide Plaintiff with an uninterrupted meal period of at least thirty (30) minutes

1 within five (5) hours of his first meal period, as a result of duties and schedules that did not permit
2 him to take all legally required meal periods, and as a result of Defendant's policy and practice of
3 only allowing a single (flawed) meal break per day, regardless of whether or not Plaintiff worked a
4 shift of over 10 hours in length.

5 59. Plaintiff is informed and believes and thereon alleges that, at relevant times during the
6 applicable limitations period, Defendant maintained a policy or practice of not providing the other
7 aggrieved employees with two uninterrupted meal periods of at least thirty (30) minutes on each day
8 that they worked ten (10) or more hours, as required by Labor Code Section 512 and the Wage
9 Order, as a result of duties and schedules that do not permit them to take all legally required meal
10 periods, and as a result of Defendant's policy and practice of only allowing a single (flawed) meal
11 break per day, regardless of whether or not Plaintiff worked a shift of over 10 hours in length.
12 Additionally, Defendant maintained a policy or practice of not providing the other aggrieved
13 employees with an uninterrupted meal period of at least thirty (30) minutes within five (5) hours of
14 their first meal period, as a result of duties and schedules that do not permit them to take all legally
15 required meal periods, and as a result of Defendant's policy and practice of only allowing a single
16 (flawed) meal break per day, regardless of whether or not Plaintiff worked a shift of over 10 hours in
17 length.

18 60. Section 12 of the Wage Order imposes an affirmative obligation on employers to
19 permit and authorize employees to take required rest periods at a rate of no less than ten (10) minutes
20 of net rest time for each four (4) hour work period, or major portion thereof, that must be in the
21 middle of each work period insofar as is practicable.

22 61. Labor Code Section 226.7 and Section 2 the Wage Order prohibit employers from
23 requiring employees to work during required rest periods and require employers to pay non-exempt
24 employees an additional hour of premium wages on each workday that the employee is not provided
25 with the required rest period.

26 62. At relevant times during the applicable limitations period, Defendant failed to provide
27 Plaintiff with a net rest period of at least ten (10) minutes for each four (4) hour work period, or
28 major portion thereof, as required by the Wage Order, as a result of duties and schedules that do not

1 permit Plaintiff to take all legally required rest breaks.

2 63. Plaintiff is informed, believes and thereon alleges that, at relevant times during the
3 applicable limitations period, Defendant maintained a policy or practice of not providing the other
4 aggrieved employees with net rest periods of a least ten (10) minutes for each four (4) hour work
5 period, or major portion thereof, as required by the Wage Order, as a result of duties and schedules
6 that do not permit them to take all legally required rest breaks.

7 **Failure to Provide and Maintain Compliant Wage Statements**

8 64. Labor Code Section 1174 requires that every person employing labor in this state
9 shall keep (1) a record showing the names and addresses of all employees employed and the ages of
10 all minors; (2) at a central location in the state or at the plants or establishments at which employees
11 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
12 number of piece-rate units earned by and any applicable piece rate paid to, employees employed at
13 the respective plants or establishments; (3) such records in accordance with rules established for this
14 purpose by the commission, but in any case, on file for not less than three years. This statute also
15 prevents an employer from prohibiting an employee from maintaining a personal record of hours
16 worked, or, if paid on a piece-rate basis, piece-rate units earned. Defendant has willfully failed to
17 keep the records required by Section 1174.

18 65. Pursuant to California Labor Code Section 226(a), Plaintiff and the other aggrieved
19 employees were entitled to receive, semimonthly or at the time of each payment of wages, an
20 accurate itemized statement showing: (a) gross wages earned; (b) net wages earned; (c) all applicable
21 hourly rates in effect during the pay period; and (d) the corresponding number of hours worked at
22 each hourly rate by the employee.

23 66. Defendant failed to provide Plaintiff with accurate itemized statements in accordance
24 with California Labor Code Section 226(a) by providing Plaintiff with wage statements with
25 inaccurate entries for hours worked, corresponding rates of pay, and total wages earned as a result of
26 the unlawful labor and payroll practices described herein.

27 67. Plaintiff is informed and believes and thereon alleges that, at all relevant times during
28 the applicable limitations period, Defendant maintained a policy or practice of not providing

1 aggrieved employees with accurate itemized wage statements by providing them with wage
2 statements with inaccurate entries for hours worked, corresponding rates of pay, total wages and
3 deductions from wages earned as a result of the unlawful labor and payroll practices described
4 herein.

5 68. Plaintiff is informed and believes and thereon alleges that Defendant's failure to
6 provide him and the aggrieved employees with accurate written wage statements is knowing and
7 intentional.

8 69. Plaintiff is informed and believes and thereon alleges that Defendant has the ability to
9 provide him and the aggrieved employees with accurate wage statements, but intentionally provides
10 wage statements that it knows are not accurate.

11 70. As a result of being provided with inaccurate wage statements by Defendant, Plaintiff
12 and the aggrieved employees have suffered an injury. Their legal rights to receive accurate wage
13 statements were violated and they were misled about the amount of wages they had actually earned
14 and were owed. In addition, the absence of accurate information on their wage statements prevented
15 immediate challenges to Defendant's unlawful pay practices, has required discovery and
16 mathematical computations to determine the amounts of wages owed, has caused difficulty and
17 expense in attempting to reconstruct time and pay records, and/or has led to the submission of
18 inaccurate information about wages and amounts deducted from wages to state and federal
19 government agencies.

20 71. California Labor Code sections 2699(a) and (g) authorize an aggrieved employee, on
21 behalf of himself and other current or former employees, to bring a civil action to recover civil
22 penalties pursuant to the procedures specified in California Labor Code Section 2699.3.

23 **Section 558 Penalties**

24 72. The PAGA claims are also brought against Defendant pursuant to provisions of the
25 Labor Code including § 558 which permits liability of persons or employers who violate or cause to
26 be violated Labor Code and IWC regulations. California Labor Code Section 2699.

27 73. The PAGA states:

28 Notwithstanding any other provision of law, any provision of this code that
provides for a civil penalty to be assessed and collected by the Labor and

1 Workforce Development Agency or any of its departments, divisions,
2 commissions, boards, agencies, or employees, for a violation of this code, may, as
3 an alternative, be recovered through a civil action brought by an aggrieved
4 employee on behalf of himself or herself and other current or former employees...

5 74. One provision of law enforceable through PAGA is Labor Code § 558, which states
6 the following:

7 (a). Any employer or other person acting on behalf of an employer who violates,
8 or causes to be violated, a section of this chapter or any provision regulating hours
9 and days of work in any order of the Industrial Welfare Commission shall be
10 subject to a civil penalty as follows:

11 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for
12 each pay period for which the employee was underpaid in addition to any amount
13 sufficient to recover underpaid wages.

14 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid
15 employee for each pay period for which the employee was underpaid in addition
16 to an amount sufficient to recover underpaid wages...

17 **Penalties Authorized by PAGA**

18 75. Pursuant to California Labor Code sections 2699(a) and (f), Plaintiff and the other
19 aggrieved employees of Defendant are entitled to, and seek to, recover civil penalties for
20 Defendant's violations of California Labor Code sections 200, 201, 202, 203, 204, 226, 226.7, 512,
21 1174, 1198, and 2802, during the applicable limitations period in the following amounts:

22 a. For violations of California Labor Code sections 200, 201, 202, 203, 226.7, and
23 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay period
24 for each initial violation and two hundred dollars (\$200.00) for each aggrieved
25 employee per pay period for each subsequent violation (penalty amounts established
26 by California Labor Code Section 2699(f)(2));

27 b. For violations of California Labor Code Section 204, one hundred dollars (\$100.00)
28 for each aggrieved employee per pay period for each initial violation and two
hundred dollars and fifty (\$200.00) for each aggrieved employee per pay period for
each subsequent violation, plus twenty-five percent (25%) of the amount unlawfully
withheld (penalty amounts established by California Labor Code § 210);

c. For violations of California Labor Code Section 1197, one hundred dollars
(\$100.00) for each aggrieved employee per pay period for each initial violation
and two hundred dollars and fifty (\$250.00) for each aggrieved employee per pay

1 period for each subsequent violation regardless of whether the initial violation is
2 intentionally committed (penalty amounts established by California Labor Code
3 § 1197.1);

4 d. For violations of California Labor Code Sections 221 and 223 one hundred
5 dollars (\$100.00) for each aggrieved employee for each initial violation and two
6 hundred dollars (\$200.00) for each aggrieved employee for each subsequent or
7 willful violation (penalty amounts established by California Labor Code
8 §225.5);

9 e. For violations of California Labor Code Section 1174, five hundred dollars
10 (\$500.00) for each of Defendants' violations in addition to any other penalties or
11 fines permitted by law (penalty amounts established by California Labor Code §
12 1174.5);

13 f. For violations of California Labor Code Section 226, two hundred fifty dollars
14 (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00)
15 per employee for each subsequent violation (penalty amounts established by
16 California Labor Code Section 226.3);

17 g. For violations of California Labor Code Section 1174, five hundred dollars (\$500)
18 for each of Defendants' violations in addition to any other penalties or fines
19 permitted by law (penalty amounts established by California Labor Code Section
20 1174.5);

21 h. For violations of California Labor Code section 512 and, Wage Order 9-2001
22 Sections 9, 11, and 12, fifty dollars (\$50.00) for each aggrieved employee for
23 each initial violation for pay period for which the employee was underpaid in
24 addition to an amount sufficient to recover unpaid wages and one hundred
25 dollars (\$100.00) for each underpaid employee for each pay period for which the
26 employee was underpaid in addition to an amount sufficient to recover unpaid
27 wages (penalty amounts established by California Labor Code Section 558).

28 i. For violations of California Labor Code Section 558, fifty dollars (\$50.00) for

1 initial violation, fifty dollars (\$50.00) for each underpaid employee for each pay
2 period for which the employee was underpaid in addition to an amount sufficient
3 to recover unpaid wages; for each subsequent violation, one hundred dollars
4 (\$100.00) for each underpaid employee for each pay period for which the
5 employee was underpaid in addition to an amount sufficient to recover underpaid
6 wages.

7 76. Pursuant to California Labor Code Section 2699(g), Plaintiff, on behalf of himself
8 and the other aggrieved employees, are entitled to an award of reasonable attorneys' fees and costs.

9 **PRAYER FOR RELIEF**

10 Wherefore, Plaintiff prays for judgment against Defendant as follows:

- 11 a. Civil penalties;
12 b. Other penalties and fines permitted by law;
13 c. Costs of suit;
14 d. Reasonable attorneys' fees; and
15 e. Such other relief as the Court deems just and proper.
16 f.

17 DATED: May 4, 2016

**LAW OFFICES OF THOMAS W. FALVEY
ALEXANDER KRAKOW + GLICK LLP**

18
19 By: 

Thomas W. Falvey, Esq.
Michael H. Boyamian, Esq.
Armand R. Kizirian, Esq.
Michael S. Morrison, Esq.

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21
22 Attorneys for Plaintiff JAMES SOUZA individually, on
23 behalf of all others similarly situated, and the general
24 public

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26 ///

DEMAND FOR JURY TRIAL

1
2 Plaintiff, James Souza, individually and on behalf of all other aggrieved employees,
3 demands a jury trial of this matter.

4 DATED: May 4, 2016

**LAW OFFICES OF THOMAS W. FALVEY
ALEXANDER KRAKOW + GLICK LLP**

5
6 By:  _____

7 Thomas W. Falvey, Esq.
8 Michael H. Boyamian, Esq.
9 Armand R. Kizirian, Esq.
10 Michael S. Morrison, Esq.
11 Attorneys for Plaintiff JAMES SOUZA individually, on
12 behalf of all others similarly situated, and the general
13 public
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