

1 ZACHARY CROSNER (SBN 272295)
zach@crosnerlegal.com

2 MICHAEL CROSNER (SBN 41294)
mike@crosnerlegal.com

3 BLAKE JONES (SBN 211221)
blake@crosnerlegal.com

4 REX PHILLIPS (SBN 237747)
rex@crosnerlegal.com

5 **CROSNER LEGAL, PC**
6 9440 Santa Monica Blvd., Ste. 301
7 Beverly Hills, CA 90210
8 Tel: (310) 496-5818
9 Fax: (310) 510-6429

10 Attorneys for PHILLIP ALONZO

11
12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**
14

15 PHILLIP ALONZO, on behalf of himself
16 and others similarly situated and aggrieved,

17 Plaintiff,

18 vs.

19 BRENNTAG PACIFIC, INC., a Delaware
20 Corporation, and DOES 1 to 100, inclusive,

21 Defendants.

Case No.: 20STCV20030

**FIRST AMENDED CLASS ACTION AND
REPRESENTATIVE COMPLAINT**

JURY TRIAL DEMANDED

22 1. Plaintiff PHILLIP ALONZO is, and at relevant times was, an individual domiciled
23 in the State of California and a citizen of the State of California who worked as a non-exempt
24 production employee for Defendant in the State of California.

25 2. Defendant BRENNTAG PACIFIC, INC. is a Delaware Corporation that, at all
26 relevant times, was authorized to do business within the State of California and is doing business
27 in the State of California and/or that Defendants DOES 1 -100 are, and at all times relevant hereto
28 were persons acting on behalf of Defendant in the establishment of, or ratification of, the

1 aforementioned illegal wage and hour practices or policies. Defendant BRENNTAG PACIFIC,
2 INC. is a chemical manufacturer and distributor. Defendants operate in not only Los Angeles
3 County but also throughout the state of California, and employed Plaintiff and other putative class
4 members in California at its business(es).

5 3. The true names and capacities of the DOE Defendants sued herein as DOES 1
6 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues each such
7 Defendant by said fictitious names. Each of the Defendants designated herein as a DOE is legally
8 responsible for the unlawful acts alleged herein. Plaintiff will seek leave of Court to amend this
9 Complaint to reflect the true names and capacities of the Doe Defendants when such identities
10 become known.

11 4. Plaintiff is informed and believes, and thereupon alleges that at all times herein,
12 Defendants, and each of them, were agents, servants, joint employers, employees, employers,
13 partners, and/or joint venturers of each other Defendant, and were, as such, acting within the
14 scope, course, and authority of said relationship. Each of the acts and/or omissions complained of
15 herein were alleged and made known to, and ratified by, each of the other Defendants. All named
16 Defendants and Doe Defendants are hereinafter collectively referred to as “Defendant” or
17 “Defendants.”

18 5. At all relevant times, Defendants were and are legally responsible for all of the
19 unlawful conduct, policies, practices, acts and omissions complained of herein. Further,
20 Defendants are responsible for each of the unlawful acts or omissions complained of herein under
21 the doctrine of *respondeat superior*. The conduct of Defendants’ managers and supervisors was at
22 all relevant times undertaken as employees of Defendants, acting within the scope of their
23 employment or authority in all of the unlawful activities described herein.

24 6. This court possesses original subject matter jurisdiction over this matter. Venue is
25 proper in Los Angeles County, California, because Defendants do business in Los Angeles
26 County, California, and some of the complained of conduct occurred in this judicial district.

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1 **CLASS ALLEGATIONS**

2 7. Plaintiff brings this action as a class action under Code of Civil Procedure section
3 382 on behalf of himself and all others similarly situated. The class Plaintiff seeks to represent is
4 defined as follows: “All hourly paid, non-exempt individuals who worked for Defendants in
5 California at any time within the four years prior to the filing of the initial complaint.”

6 8. Numerosity: While the exact number of class members is unknown to Plaintiff at
7 this time, the class is so numerous that the individual joinder of all members is impractical under
8 the circumstances of this case.

9 9. Common Questions of Law and Fact. This lawsuit is suitable for class treatment
10 because common questions of law and fact predominate over individual issues. Common
11 questions include, but are not limited to, the following: (1) whether Defendants properly
12 calculated and paid all amounts due to Plaintiff and the class members for wages earned, including
13 overtime wages, under California law; (2) whether Defendants violated the California Labor Code
14 and/or IWC Wage Orders by withholding wages, including overtime wages, from Plaintiff and the
15 class members; (3) whether Defendants provided Plaintiff and the class members with all required
16 meal periods or premium compensation in lieu thereof, under California law; (4) whether
17 Defendants provided Plaintiff and the class members with all required rest periods, or
18 compensation in lieu thereof, under California law; (5) whether Defendants provided Plaintiff and
19 the class members with proper, itemized wage statements; (6) whether Defendants timely paid
20 Plaintiff and the class members all wages due upon termination of employment; (7) whether
21 Defendants’ failure to timely pay all wages due upon termination of employment was willful; and
22 (8) whether Defendants violated California Business and Professions Code sections 17200, et seq.

23 10. Ascertainable Class. The proposed class is ascertainable as its members can be
24 identified and located using information in Defendants’ business, payroll and personnel records.

25 11. Numerosity. The plaintiff class is so numerous that the individual joinder of all
26 members is impractical under the circumstances of this case. While the exact number of class
27 members is unknown to Plaintiff, Plaintiff is informed and believes the class consists of at least 75
28 individuals.

12. Typicality. Plaintiff's claims are typical of the claims of the class members. Plaintiff suffered a similar injury as the other class members as a result of Defendants' common practices regarding, inter alia, calculation and payment of wages, including overtime wages, failure to provide proper meal and rest periods or premium compensation in lieu thereof, provision of wage statements, and payment of wages due upon termination. In addition, Plaintiff will fairly and adequately protect the interests of the class members. Plaintiff has no interests adverse to the interests of the other class members.

13. Superiority. A class action is superior to other available means for the fair and efficient adjudication of this controversy since individual joinder of all members of the class is impractical. Class action treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would engender. Furthermore, as the damages suffered by each individual member of the class may be relatively small, the expenses and burden of individual litigation would make it difficult or impossible for individual members of the class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. The cost to the court system of adjudication of such individualized litigation would be substantial. Individualized litigation would also present the potential for inconsistent or contradictory judgments. Finally, the alternative of filing a claim with the California Labor Commissioner is not superior, given the lack of discovery in such proceedings, the fact that there are fewer available remedies, and the losing party has the right to a trial de novo in the Superior Court.

FACTUAL BACKGROUND

14. During four-year period preceding filing of this complaint, Plaintiff and each of the class members worked for Defendants in the State of California as non-exempt production workers and/or other similar titles. Defendants at all times exercised control over Plaintiff and each of the class members, and suffered and/or permitted them to work.

15. Plaintiff started working for Defendants in 2018. Plaintiff unloaded rail cars full of chemicals and helped load and unload chemicals onto trucks and trailers as well as fill chemical

1 containers. Plaintiff typically worked 10 to 11 or more hours per day, 5 days a week. Plaintiff did
2 not receive all wages for all hours worked because through the operation of Defendants' uniform
3 policies and practices concerning the recording, calculation and payment of minimum and
4 overtime wages, Plaintiff and class members were not paid for all hours worked and/or at the
5 correct rate of pay. Plaintiff and class members would systematically be deprived of compensable
6 time because the time recording system implemented by Defendants resulted in understating actual
7 compensable work time due to the rounding. Defendants also required Plaintiff and class member
8 to perform work off-the-clock. Defendants further failed to incorporate all non-discretionary forms
9 of payment like bonuses into Plaintiff's and class members' regular rate for purposes of
10 calculating and paying overtime wages, resulting in underpayment of overtime wages. Defendants
11 also did not provide Plaintiff and the class members with timely, duty-free and uninterrupted meal
12 and rest periods, or with compensation in lieu thereof, as required by California law. Additionally,
13 Defendants failed to provide accurate, itemized wage statements to Plaintiff and the class
14 members, and failed to pay Plaintiff and the class members all wages due in a timely fashion upon
15 termination of employment.

16 FIRST CAUSE OF ACTION

17 (Recovery of Unpaid Minimum Wages and Liquidated Damages -
18 Labor Code §§ 1194 and 1194.2)

19 16. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

20 17. California law provides employees in California must be paid for all hours worked,
21 up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage.
22 As alleged herein, Plaintiff and the class members regularly worked hours for which they were not
23 compensated by Defendants as required by California law. Defendants violated California
24 minimum wage laws in part by using a rounding system that, as applied, worked to detrimentally
25 shave and round time off from Plaintiff and class members' work days. Specifically, Plaintiff
26 alleges on information and belief that through the operation of Defendants' rounding system,
27 Plaintiff and class members would systematically be deprived of compensable time because the
28 time recording system implemented by Defendants resulted in understating actual compensable

1 work time due to the rounding. Further, upon information and belief, Defendants required,
2 suffered and/or permitted Plaintiff and class members to work off-the-clock, including during
3 supposedly off-duty meal periods, but Defendants did not compensate Plaintiff and class members
4 at least minimum wage for this time hours worked, resulting in unpaid wages. Defendants edited
5 Plaintiff's and class members' time punches to show fewer hours worked than actual time worked.

6 18. Pursuant to Labor Code sections 1194 and 1194.2, Plaintiff and the class members
7 are entitled to recover all unpaid minimum time wages and liquidated damages thereon, plus
8 attorney's fees and costs, in an amount to be proved at trial.

9 SECOND CAUSE OF ACTION

10 (Recovery of Unpaid Overtime – Labor Code § 1194)

11 19. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

12 20. California law provides employees in California must be paid overtime, equal to
13 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8
14 per day, and must be paid double wages for all hours worked in excess of 12 per day, unless they
15 are exempt. As alleged herein, Plaintiff and the class members, all of whom were non-exempt
16 employees, regularly worked more than 8 hours per day and/or 40 hours in a week, but were not
17 paid all overtime wages due and owing under California law. Defendants have violated
18 California's overtime laws by, among other things, failing to correctly calculate, or record at all,
19 the total number of hours worked by Plaintiff and similarly class members (by virtue of its time-
20 shaving rounding system) and not paying proper overtime rates for all overtime worked. For
21 example, Defendants failed to incorporate all non-discretionary remuneration, including but not
22 limited to, non-discretionary bonus pay, into Plaintiff and class members' regular pay rates for
23 purposes of calculating the owed overtime rates, resulting in underpaid overtime wages. Based on
24 employees' regular work schedules, Plaintiff and class members often worked more than 8 hours
25 in a day and/or 40 hours in a week for which they were not properly compensated.

26 21. Pursuant to Labor Code section 1194, Plaintiff and the class members are entitled
27 to recover all unpaid overtime wages, plus attorney's fees and costs, in an amount to be proved at
28 trial.

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1 Defendants also failed to pay Plaintiff and class members an additional hour of wages at their
2 regular rates of pay for each workday a meal period was not provided.

3 25. Defendants failed to provide Plaintiff and the class members with all required meal
4 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,
5 Plaintiff and the class members are entitled to one additional hour's pay for each day a meal
6 period was missed, late or interrupted, all in an amount to be proved at trial.

7 FOURTH CAUSE OF ACTION

8 (Failure to Provide Rest Periods or Compensation in Lieu Thereof --

9 Labor Code § 226.7)

10 26. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

11 27. California law requires an employer to authorize or permit an employee to take a
12 rest period of ten net minutes for every four hours worked, or major fraction thereof, and such rest
13 periods must be in the middle of the four-hour period insofar as practicable. If the employer fails
14 to provide any required rest periods, or fails to provide a fully compliant rest break for a net 10
15 minutes wherein the employee is fully relieved of all duties and all employer control, the employer
16 must pay the employee one hour of pay at the employee's regular rate of compensation for each
17 workday the employer did not provide a legally required and/or fully compliant rest period.

18 28. Defendants employed policies and procedures that ensured Plaintiff and other class
19 members would not receive all legally required rest periods, as Defendants did not authorize and
20 permit all required rest periods in strict accordance to, and in compliance with, the timing
21 requirements of all applicable Wage Orders. Defendants similarly employed policies and
22 procedures that rendered rest periods non-compliant with the requirements of California law by,
23 *inter alia*, only providing Plaintiff and class members with a maximum of two rest breaks per shift
24 regardless of the number of hours worked, and failing to relieve Plaintiff and class members of all
25 duties and all employer control. Plaintiff and class members regularly worked enough hours to be
26 entitled to three rest breaks in a shift but Defendants only provided Plaintiff and class members
27 with two rest breaks regardless of the number of hours they worked. Defendants further employed
28 policies and procedures ensuring Plaintiff and class members did not receive premium wages to

1 compensate them for workdays they did not receive all legally required and fully compliant rest
2 periods.

3 29. Defendants failed to provide Plaintiff and the class members with all required rest
4 periods, or with compensation in lieu thereof. As a result, under Labor Code section 226.7,
5 Plaintiff and the class members are entitled to one additional hour's pay for each day a rest break
6 was missed, late or interrupted, all in an amount to be proved at trial.

7 FIFTH CAUSE OF ACTION

8 (Failure to Provide Accurate Wage Statements – Labor Code § 226)

9 30. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

10 31. The California Labor Code provides that, at the time of each payment of wages, the
11 employer must provide each employee with an itemized statement showing, inter alia, gross wages
12 earned, total hours worked, all deductions taken, net wages earned, the inclusive dates for which
13 the employee is being paid, the employee's name and last four digits of their social security
14 number, the name and address of the legal entity that it is the employer, and all applicable hourly
15 rates in effect during the pay period and all hours worked at each rate.

16 32. Defendants Defendants knowingly and intentionally failed to provide Plaintiff and
17 other clas members with proper, itemized wage statements as the wage statements provided by
18 Defendants do not accurately reflect, inter alia, gross wages earned, total hours worked, net wages
19 earned, and all applicable hourly rates in effect during each pay period and all hours worked at
20 each applicable hourly rate, for all the reasons herein mentioned.

21 33. Defendants knowingly and intentionally failed to provide Plaintiff and the class
22 members with proper, itemized wage statements. Accordingly, under Labor Code section 226,
23 Plaintiff and the class members each are entitled to penalties in the amount of \$50.00 for the initial
24 pay period in which a violation occurred, and \$100.00 for each subsequent pay period in which a
25 violation occurred, up to an aggregate penalty of \$4,000.00 per employee, plus attorney's fees and
26 costs, all in an amount to be proved at trial.

27 SIXTH CAUSE OF ACTION

28 (Waiting Time Penalties – Labor Code §§ 201, et seq.)

1 34. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

2 35. The California Labor Code provides that, at the time of termination of employment,
3 the employer must pay an employee all wages due and owing within the time frames set forth in
4 Labor Code sections 201, et seq. Upon information and belief, Defendants terminated Plaintiff on
5 or about November 14, 2019, but Defendants did not pay Plaintiff his final wages within the time
6 periods required by Labor Code sections 201-202. Moreover, for the reasons set forth herein,
7 Defendants willfully failed to pay Plaintiff and the class members who no longer are employed by
8 Defendants all wages due and owing within the deadlines set forth in Labor Code sections 201, et
9 seq.

10 36. Under Labor Code section 203, Plaintiff and the class members who no longer are
11 employed with Defendants are entitled to recover waiting time penalties of up to 30 days' pay,
12 plus attorney's fees and costs, in an amount to be proved at trial.

13 SEVENTH CAUSE OF ACTION

14 (Violation of Unfair Competition Law – Bus. & Prof. Code §§ 17200, et seq.)

15 37. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

16 38. Defendants' failure, inter alia, to pay all wages earned and failure to pay all
17 overtime wages earned, failure to provide all required meal and rest periods or compensation in
18 lieu thereof, and failure to provide accurate itemized wage statements, all in violation of the Labor
19 Code and Wage Orders, constitutes an unlawful, unfair or fraudulent business act or practice, in
20 violation of Business & Professions Code sections 17200, et seq.

21 39. Pursuant to Business & Professions Code section 17203, Plaintiff and the class
22 members are entitled to restitution of all unpaid wages, unreimbursed expenses, and other sums
23 owed, plus attorney's fees and costs, in an amount to be proved at trial.

24 EIGHTH CAUSE OF ACTION

25 (Violation of Private Attorneys General Act of 2004 – Labor Code §§ 2698, et seq.)

26 40. Plaintiff incorporates all preceding paragraphs as if fully alleged herein.

1 41. Plaintiff gave timely written notice by certified mail to Defendants of the violations
2 of various provisions of the California Labor Code as alleged in this complaint and filed notice of
3 the violations online with the Labor and Workforce Development Agency (“LWDA”).

4 42. The LWDA did not provide notice of its intention to investigate Defendants’
5 violations after expiration of the 65-day waiting time period, or at any time. Defendants also failed
6 to cure within the time allotted by PAGA and Labor Code section 2810.3. Consequently,
7 Plaintiff’s right to file the instant lawsuit then duly accrued.

8 43. Plaintiff is an “Aggrieved Employee” under PAGA, as he was employed by
9 Defendants during the applicable statutory limitations period and suffered one or more of the
10 Labor Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself
11 and all other current and former Aggrieved Employees, the civil penalties provided by PAGA,
12 plus reasonable attorney's fees and costs.

13 44. Plaintiff seeks to recover the PAGA civil penalties through a representative action
14 permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009) 46
15 Cal.4th 969. Therefore, class certification of the PAGA claims is not required.

16 45. Therefore, under the provisions of PAGA and Labor Code sections 201-202, 203,
17 204, 210, 221-223, 225.5, 226, 226.3, 226.7, 256, 432.5, 432.7, 510, 512, 558, 558.1, 1174,
18 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2699, and all applicable Wage Orders as well as
19 all interpretations of these laws by California Courts and administrative bodies, as well as any
20 other law that is enforceable through PAGA, Defendants are liable for the following penalties:

- 21 (i) All statutorily-specified penalties recoverable under PAGA as enumerated in the
22 relevant California Labor Code provisions listed herein only if permitted by the
23 PAGA statute; and
- 24 (ii) Default PAGA penalties for any violation of the enumerated list of Labor Code
25 violations without a civil penalty recoverable under the PAGA, all in the default
26 amounts provided by Labor Code section 2699(f).
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46. The proper measure of penalties under PAGA is the number of violations, whether those violations were committed as against Plaintiff or any Aggrieved Employee, whether a party to this action or not.

47. Pursuant to Labor Code section 2699(g), and/or any and all other applicable laws, Plaintiff is entitled to recover civil penalties, costs, and attorney's fees.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for relief and judgment as follows on behalf of himself and all similarly situated and aggrieved individuals:

1. For an order that the action be certified as a class action;
2. For an order that Plaintiff be appointed class representative;
3. For an order that counsel for Plaintiff be appointed class counsel;
4. For compensatory damages according to proof;
5. For an order requiring Defendants to make restitution of all amounts wrongfully withheld from Plaintiff and the class;
6. For pre-judgment interest as permitted by law;
7. For civil penalties according to proof; ;
8. Attorney's fees and costs reasonably incurred; and
9. Such other and further relief that the Court deems just and proper.

Dated: September 23, 2021

CROSNER LEGAL, APC

Zuk

Blake Jones
Zach Crosner
Rex Phillips
Michael Crosner
Attorneys for Plaintiff
PHILLIP ALONZO

DEMAND FOR JURY TRIAL

PLAINTIFF PHILLIP ALONZO demands a trial by jury on all claims so triable.

Dated: September 23, 2021

CROSNER LEGAL, P.C.

A handwritten signature in black ink, appearing to read 'Zach', is written over a horizontal line.

Blake Jones
Zach Crosner
Rex Phillips
Michael Crosner
Attorneys for Plaintiff
PHILLIP ALONZO

1 PROOF OF SERVICE
2 *PHILLIP ALONZO vs. BRENNTAG PACIFIC, INC.*
3 *Los Angeles Superior Court Case No. 20STCV20030*

4 At the time of service, I was over 18 years of age and not a party to this action. I am
5 employed in the County of Los Angeles, State of California. My business address is 9440 Santa
6 Monica Blvd., Ste. 301, Beverly Hills, CA 90210.

7 On November 5, 2021, I served true copies of the following document(s) described as

8 **FIRST AMENDED CLASS ACTION AND REPRESENTATIVE COMPLAINT**
9 **JURY TRIAL DEMANDED**

10 on the interested parties in this action as follows:

11 SEE ATTACHED SERVICE LIST

12 ☒ **ONLY BY ELECTRONIC TRANSMISSION.** Pursuant to the Court's Order re Electronic
13 Service, I caused the documents described above to be E-Served through Case Anywhere by
14 electronically mailing a true and correct copy through Case Anywhere to the addressee(s) listed

15 I declare under penalty of perjury under the laws of the United States of America that the foregoing
16 is true and correct and that I am employed in the office of a member of the bar of this Court at
17 whose direction the service was made.

18 Executed on November 5, 2021, at Los Angeles, California.

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20 _____
21 Maria Monterrey

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28 PROOF OF SERVICE

1 PHILLIP ALONZO vs. BRENNTAG PACIFIC, INC.
2 Los Angeles Superior Court Case No. 20STCV20030

3 Attorney for Defendant
4 BRENNTAG PACIFIC, INC.

5 Eric Angel, Esq.
6 James Carter, Esq.
7 **Jackson Lewis P.C.**
8 200 Spectrum Center Drive, Suite 500
9 Irvine, CA 92618
10 Phone: (949) 885-1360
11 Fax: (949) 885-1380
12 eric.angel@jacksonlewis.com
13 james.carter@jacksonlewis.com
14
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