

1 **AEGIS LAW FIRM, PC**

2 KASHIF HAQUE, State Bar No. 218672

3 SAMUEL A. WONG, State Bar No. 217104

4 JESSICA L. CAMPBELL, State Bar No. 280626

5 9811 Irvine Center Drive, Suite 100

6 Irvine, California 92618

7 Telephone: (949) 379-6250

8 Facsimile: (949) 379-6251

9 Attorneys for Plaintiff Efrain Penaloza, individually,
10 and on behalf of all others similarly situated.

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF ORANGE**

13 EFRAIN PENALOZA, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 OC DOUGH, INC., a California
18 corporation; and DOES 1 through 20,
19 inclusive,

20 Defendants.

Case No.

21 **CLASS ACTION COMPLAINT FOR:**

- 22 1. Failure to Pay Minimum Wages;
- 23 2. Failure to Pay Overtime Wages;
- 24 3. Failure to Provide Meal Periods;
- 25 4. Failure to Permit Rest Breaks
- 26 5. Failure to Reimburse Business Expenses
- 27 6. Failure to Provide Accurate Itemized Wage Statements;
- 28 7. Failure to Pay All Wages Due Upon Separation of Employment; and
8. Violation of Business and Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiff Efrain Penaloza, individually, and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Efrain Penaloza (“Plaintiff”) brings this putative class action against
5 defendant OC Dough, Inc., a California corporation (“Defendant”), and DOES 1 through 20,
6 inclusive (collectively, “Defendants”), on behalf of himself individually and a putative class of
7 California citizens who are and were employed by Defendants as non-exempt employees
8 throughout California.

9 2. Defendants are in the business of operating franchise pizza delivery restaurants
10 throughout California.

11 3. Through this action, Plaintiff alleges that Defendants have engaged in a
12 systematic pattern of wage and hour violations under the California Labor Code and Industrial
13 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
14 unfair competition.

15 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
16 increased their profits by violating state wage and hour laws by, among other things:

17 (a) failing to pay all wages (including minimum wages and overtime
18 wages);

19 failing to provide lawful meal periods or compensation in lieu thereof;

20 (b) failing to authorize or permit lawful rest breaks or provide compensation
21 in lieu thereof;

22 (c) failing to reimburse necessary business-related costs expended by its
23 non-exempt employees;

24 (d) failing to provide accurate itemized wage statements; and

25 (e) failing to pay all wages due upon separation of employment.

26 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
27 others similarly situated in California to recover, among other things, unpaid wages and
28 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§

201-203, 226, 226.7, 510, 512, 1182.12, 1194, 1194.2, 1197 1198, 2800, and 2802, and Code of California Civil Procedure § 1021.5.

JURISDICTION AND VENUE

6. This is a class action pursuant to California Code of Civil Procedure § 382. The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits of the Superior Court and will be established according to proof at trial.

7. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all causes except those given by statutes to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

8. This Court has jurisdiction over all Defendants because, upon information and belief, they are citizens of California, have sufficient minimum contacts in California, or otherwise intentionally avail themselves of the California market so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

9. Venue is proper in this Court because, upon information and belief, Defendants reside, transact business, or have offices in this county, and the acts and omissions alleged herein took place in this county.

THE PARTIES

10. Plaintiff is a resident of California in the County of Orange and worked for Defendants in California as a non-exempt employee during the relevant time periods as alleged herein.

11. OC Dough, Inc., is a corporation doing business throughout the State of California. Plaintiff is informed and believes, and thereon alleges that at all times hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage Orders as employers, whose employees were and are engaged throughout this county and the State of California.

1 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
2 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
3 Complaint and serve such fictitiously named defendants once their names and capacities
4 become known.

5 13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20
6 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants
7 at all relevant times.

8 14. Plaintiff is informed and believes, and thereon alleges, that each defendant acted
9 in all respects pertinent to this action as the agent of the other defendant, carried out a joint
10 scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant
11 are legally attributable to the other defendant. Furthermore, defendants in all respects acted as
12 the employer and/or joint employer of Plaintiff and the class members.

13 15. Plaintiff is informed and believes, and thereon alleges, that each and all of the
14 acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or
15 DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on
16 the other's behalf. The acts of any and all Defendants were in accordance with, and represent,
17 the official policy of Defendants.

18 16. At all relevant times, Defendants, and each of them, acted within the scope of
19 such agency or employment, or ratified each and every act or omission complained of herein.
20 At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of
21 each and all the other Defendants in proximately causing the damages herein alleged.

22 17. Plaintiff is informed and believes, and thereon alleges, that each of said
23 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
24 omissions, occurrences, and transactions alleged herein.

25 **CLASS ACTION ALLEGATIONS**

26 18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of
27 himself and all others similarly situated who were affected by Defendants' Labor Code,
28 Business and Professions Code §§ 17200, and IWC Wage Order violations.

1 19. All claims alleged herein arise under California law for which Plaintiff seeks
2 relief authorized by California law.

3 20. Plaintiff's proposed class consists of and is defined as follows:

4 Class

5 All California citizens currently or formerly employed by Defendants as non-
6 exempt employees in the State of California within four years prior to the filing of
7 this action to the date the class is certified ("Class").

8 21. Plaintiff also seeks to certify the following subclass of employees:

9 Waiting Time Subclass

10 All Class Members who separated their employment with Defendants at any time
11 within three years prior to the filing of this action to the date the class is certified
12 ("Subclass" or "Waiting Time Subclass").

13 22. Plaintiff reserves the right to modify or re-define the Class, establish additional
14 subclasses, or modify or re-define any class or subclass definition as appropriate based on
15 investigation, discovery, and specific theories of liability.

16 23. Members of the Class and the Subclass described above will be collectively
17 referred to as "Class Members."

18 24. There are common questions of law and fact as to the Class Members that
19 predominate over any questions affecting only individual members including, but not limited to,
20 the following:

21 (a) Whether Defendants failed to pay Plaintiff and Class Members all wages
22 (including minimum wages and overtime wages) for all hours worked by
23 Plaintiff and Class Members.

24 (b) Whether Defendants deprived Plaintiff and Class Members of timely
25 meal periods or required Plaintiff and Class Members to work through
26 meal periods without compensation.

- 1 (c) Whether Defendants deprived Plaintiff and Class Members of rest breaks
2 or required Plaintiff and Class Members to work through rest breaks
3 without compensation.
- 4 (d) Whether Defendants failed to reimburse Plaintiff and Class Members for
5 necessary business-related costs expended for the benefit of Defendants.
- 6 (e) Whether Defendants failed to provide Plaintiff and Class Members
7 accurate itemized wage statements.
- 8 (f) Whether Defendants failed to timely pay the Waiting Time Subclass all
9 wages due upon termination or within seventy-two (72) hours of
10 resignation.
- 11 (g) Whether Defendants' conduct was willful or reckless.
- 12 (h) Whether Defendants engaged in unfair business practices in violation of
13 Business and Professions Code §§ 17200, *et seq.*

14 25. There is a well-defined community of interest in this litigation and the proposed
15 Class and Subclass are readily ascertainable:

16 (a) Numerosity: The Class Members are so numerous that joinder of all
17 members is impractical. Although the members of the entire Class and Subclass are unknown
18 to Plaintiff at this time, on information and belief, the class is estimated to be greater than one
19 hundred (100) individuals. The identities of the Class Members are readily ascertainable by
20 inspection of Defendants' employment and payroll records.

21 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
22 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
23 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
24 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
25 sustained by the Class Members, because they arise out of and are caused by Defendants'
26 common course of conduct as alleged herein.

27 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
28 interests of all Class Members because it is in his best interest to prosecute the claims alleged

1 herein to obtain full compensation and penalties due to his and the Class Members. Plaintiff's
2 attorneys, as proposed class counsel, are competent and experienced in litigating large
3 employment class actions and versed in the rules governing class action discovery,
4 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
5 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
6 for the prosecution of this action for the substantial benefit of the Class Members.

7 (d) Superiority: The nature of this action makes use of class action
8 adjudication superior to other methods. A class action will achieve economies of time, effort,
9 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
10 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
11 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
12 manage this case as a class action.

13 (e) Public Policy Considerations: Employers in the State of California
14 violate employment and labor laws every day. Current employees are often afraid to assert their
15 rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing
16 actions because they believe their former employers might damage their future endeavors
17 through negative references and/or other means. Class actions provide class members who are
18 not named in the complaint with a type of anonymity that allows for the vindication of their
19 rights while affording them privacy protections.

20 **GENERAL ALLEGATIONS**

21 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
22 California residents as non-exempt employees throughout California and at Defendants'
23 California business location(s).

24 27. Defendants continue to employ non-exempt employees within California.

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

1 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Class Members were entitled to receive wages for all
3 hours worked (including minimum wages and overtime wages) and that they were not
4 receiving all wages earned for work that was required to be performed. In violation of the
5 Labor Code and IWC Wage Orders, Plaintiff and Class Members were not paid all wages
6 (including minimum wages and overtime wages) for all hours worked, including, but not
7 limited to, time spent working through meal periods.

8 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and Class Members were entitled to receive all required meal
10 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
11 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
12 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
13 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
14 rate of pay when they did not receive a timely, uninterrupted meal period.

15 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
17 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
18 when a rest break was late, missed, or interrupted. In violation of the Labor Code and IWC
19 Wage Orders, Plaintiff and Class Members did not receive all rest breaks or payment of one (1)
20 additional hour of pay at Plaintiff's and Class Members' regular rate of pay when a rest break
21 was missed, late, or interrupted.

22 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Class Members were entitled to reimbursement and/or
24 indemnification for all necessary business expenditures or losses as a direct consequence of the
25 discharge of their duties, or of their obedience to the directions of Defendants. In violation of
26 the Labor Code and IWC Wage Orders, Plaintiff and Class Members incurred necessary
27 business expenses or losses, but were not reimbursed nor indemnified of such expenses or
28

1 losses that were incurred as a direct consequence of the discharge of their duties, or of their
2 obedience to the directions of Defendants.

3 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that Plaintiff and Class Members were entitled to receive itemized wage
5 statements that accurately showed the following information pursuant to the Labor Code: (1)
6 gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units
7 earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all
8 deductions, provided that all deductions made on written orders of the employee may be
9 aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period
10 for which the employee is paid; (7) the name of the employee and only the last four digits of his
11 or her social security number or an employee identification number other than a social security
12 number; (8) the name and address of the legal entity that is the employer; and (9) all applicable
13 hourly rates in effect during the pay period and the corresponding number of hours worked at
14 each hourly rate by the employee. In violation of the Labor Code, Plaintiff and Class Members
15 were not provided with accurate itemized wage statements.

16 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that the Waiting Time Subclass was entitled to timely payment of wages
18 due upon separation of employment. In violation of the Labor Code, the Waiting Time Subclass
19 did not receive payment of all wages within the permissible time periods.

20 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
21 should have known they had a duty to compensate Plaintiff and Class Members, and
22 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
23 intentionally failed to do so in order to increase Defendants' profits.

24 36. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
25 against Defendants on behalf of himself and all Class Members to recover, among other things,
26 unpaid wages (including minimum wages and overtime wages), unpaid meal period premium
27 payments, unpaid rest period premium payments, interest, attorneys' fees, penalties, costs, and
28 expenses.

1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PAY MINIMUM WAGES**

3 (Violation of Labor Code §§ 1182.12 1194, 1194.2, 1197; IWC Wage Order §§ 3-4)

4 37. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 38. Labor Code §§ 1194 and 1197 provide that the minimum wage for employees
7 fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser
8 wage than the minimum so fixed is unlawful.

9 39. During the relevant time period, Defendants paid Plaintiff and Class Members
10 less than minimum wages when they failed to pay proper compensation for all hours worked,
11 including, but not limited to, time worked off-the-clock as herein alleged. To the extent these
12 hours do not qualify for the payment of overtime wages, Plaintiff and Class Members were not
13 being paid at least the lawful minimum wage for their work.

14 40. During the relevant time period, Defendants regularly failed to pay at least
15 minimum wage to Plaintiff and Class Members for all hours worked pursuant to Labor Code §§
16 1194 and 1197.

17 41. Defendants' failure to pay Plaintiff and Class Members the required minimum
18 wage violates Labor Code §§ 1194 and 1197. Pursuant to these sections, Plaintiff and Class
19 Members are entitled to recover the unpaid balance of their minimum wage compensation as
20 well as interest, costs, and attorneys' fees.

21 42. Pursuant to Labor Code § 1194.2, Plaintiff and Class Members are entitled to
22 recover liquidated damages in an amount equal to the wages unlawfully unpaid and the accrued
23 interest thereon.

24 **SECOND CAUSE OF ACTION**

25 **FAILURE TO PAY OVERTIME WAGES**

26 (Violation of Labor Code §§ 510, 1194, and 1198; Violation of IWC Wage Order § 3)

27 43. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 44. Labor Code § 1198 and the applicable IWC Wage Order provide that it is
2 unlawful to employ persons without compensating them at a rate of pay at either one and one-
3 half or two times the person's regular rate of pay, depending on the number of hours or days
4 worked by the person on a daily or weekly basis.

5 45. Specifically, the applicable IWC Wage Orders provide that Defendants are and
6 were required to pay overtime compensation to Plaintiff and Class Members at the rate of one
7 and one-half times their regular rate of pay when working and for all hours worked in excess of
8 eight hours in a day or more than 40 hours in a workweek and for the first eight hours of work
9 on the seventh day of work in a workweek.

10 46. The applicable IWC Wage Orders further provide that Defendants are and were
11 required to pay overtime compensation to Plaintiff and Class Members at a rate of two times
12 their regular rate of pay when working and for all hours worked in excess of 12 hours in a day
13 or in excess of eight hours on the seventh day of work in a workweek.

14 47. California Labor Code § 510 codifies the right to overtime compensation at one
15 and one-half times the regular hourly rate for hours worked in excess of eight hours in a day or
16 40 hours in a week and for the first eight hours worked on the seventh consecutive day of work,
17 and overtime compensation at twice the regular hourly rate for hours worked in excess of 12
18 hours in a day or in excess of 8 hours in a day on the seventh consecutive day of work in a
19 workweek.

20 48. Labor Code § 510 and the applicable IWC Wage Orders provide that
21 employment of more than six days in a workweek is only permissible if the employer pays
22 proper overtime compensation as set forth herein.

23 49. Plaintiff and Class Members were entitled to the protections of California Labor
24 Code §§ 510 and 1194.

25 50. During the relevant time period, Defendants required Plaintiff and Class
26 Members to work in excess of eight hours in a day, 12 hours in a day, and/or 40 hours in a
27 week without paying Plaintiff and Class Members proper overtime wages for their work.
28

51. During the relevant time period, Defendants failed to pay Plaintiff and Class Members overtime wages for all overtime hours worked when Plaintiff and Class Members off-the-clock. To the extent these hours qualify for the payment of overtime wages, Plaintiff and Class Members worked shifts entitling them to overtime wages, but were not paid all overtime wages due.

52. In violation of California law, Defendants knowingly and willfully refused to perform their obligations and compensate Plaintiff and Class Members for all wages earned and all hours worked, including, but not limited to, time spent working during missed and/or interrupted meal periods, as alleged above.

53. Defendants' failure to pay Plaintiff and Class Members the unpaid balance of overtime and double time compensation, as required by California law, violates the provisions of Labor Code §§ 510 and 1198, and is therefore unlawful.

54. Pursuant to Labor Code § 1194, Plaintiff and Class Members are entitled to recover their unpaid overtime and double time compensation, as well as interest, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

55. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein

56. Labor Code § 226.7 provides that no employer shall require an employee to work during any meal period mandated by the IWC Wage Orders.

57. Section 11 of the applicable IWC Wage Order states, “[n]o employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee.”

1 58. Labor Code § 512(a) provides that an employer may not require, cause, or permit
2 an employee to work for a period of more than five (5) hours per day without providing the
3 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
4 the total work period per day of the employee is not more than six (6) hours, the meal period
5 may be waived by mutual consent of both the employer and the employee.

6 59. Labor Code § 512(a) also provides that an employer may not employ an
7 employee for a work period of more than ten (10) hours per day without providing the employee
8 with a second meal period of not less than thirty (30) minutes, except that if the total hours
9 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
10 consent of the employer and the employee only if the first meal period was not waived.

11 60. During the relevant time period, Plaintiff and Class Members did not receive
12 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
13 their meal periods were missed, late, short, and/or they were not permitted to take a second meal
14 period.

15 61. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require
16 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
17 compensation for each work day that a compliant meal period is not provided.

18 62. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
19 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
20 and section 11 of the applicable IWC Wage Order.

21 63. As a result of Defendants' failure to pay Plaintiff and Class Members an
22 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
23 Class Members suffered and continue to suffer a loss of wages and compensation.

24 **FOURTH CAUSE OF ACTION**

25 **FAILURE TO PERMIT REST BREAKS**

26 (Violation of Labor Code §§ 226.7; Violation of IWC Wage Order § 12)

27 64. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

1 65. Labor Code § 226.7(a) provides that no employer shall require an employee to
2 work during any rest period mandated by the IWC Wage Orders.

3 66. Section 12 of the applicable IWC Wage Order states “[e]very employer shall
4 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
5 the middle of each work period[,]” and the “[a]uthorized rest period time shall be based on the
6 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
7 fraction thereof[,]” unless the total daily work time is less than three and one-half (3½) hours.

8 67. During the relevant time period, Plaintiff and Class Members did not receive a
9 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
10 they were required to work through their daily rest periods and/or were not authorized to take
11 their rest periods.

12 68. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
13 requires an employer to pay an employee one (1) additional hour of pay at the employee’s
14 regular rate of compensation for each work day that a compliant rest period is not provided.

15 69. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest
16 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
17 226.7(b) and section 12 of the applicable IWC Wage Order.

18 70. As a result of Defendants’ failure to pay Plaintiff and Class Members an
19 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
20 Members suffered and continue to suffer a loss of wages and compensation.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

23 (Violation of Labor Code §§ 2800, 2802; Violation of IWC Wage Order § 9)

24 71. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
25 though fully set forth herein.

26 72. Labor Code § 2800 states that “[a]n employer shall in all cases indemnify his
27 employee for losses caused by the employer’s want of ordinary care.”
28

1 73. Labor Code § 2802(a) states that “[a]n employer shall indemnify his or her
2 employee for all necessary expenditures or losses incurred by the employee in direct
3 consequence of the discharge of his or her duties, or of his or her obedience to the directions of
4 the employer”

5 74. Labor Code § 2802(b) states that “[a]ll awards made by a court . . . for
6 reimbursement of necessary expenditures under this section shall carry interest at the same rate
7 as judgments in civil actions. Interest shall accrue from the date on which the employee incurred
8 the necessary expenditure or loss.”

9 75. Labor Code § 2802(c) states that “[f]or purposes of this section, the term
10 “necessary expenditures or losses” shall include all reasonable costs, including, but not limited
11 to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

12 76. Section 9 of the applicable IWC Wage Order states that when tools or equipment
13 are required by the employer or are necessary to the performance of a job, such tools and
14 equipment shall be provided and maintained by the employer.

15 77. During the relevant time period, on information and belief, Plaintiff and Class
16 Members incurred necessary business-related costs that were not fully reimbursed by
17 Defendants, including, but not limited to, expenses associated with driving their personal
18 vehicles and using personal cellular phones as a direct consequence of the discharge of their job
19 duties.

20 78. In violation of Labor Code §§ 2800 and 2802 and the applicable IWC Wage
21 Order, Defendant failed to reimburse or indemnify Plaintiff and Class Members for their
22 expenses due to Defendant’s knowing and intentional failure to provide these items in
23 connection with Plaintiff and Class Member’s work and job duties.

24 79. As a direct result, Plaintiff and Class Members have suffered and continue to
25 suffer losses, and therefore seek complete reimbursement and indemnification of necessary
26 business expenditures or losses, interest thereon at the required rate, and all reasonable costs in
27 enforcing the rights under Labor Code § 2802, including, but not limited to attorneys’ fees.
28

1 **SIXTH CAUSE OF ACTION**

2 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

3 (Violation of Labor Code § 226; Violation of IWC Wage Order)

4 80. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
5 though fully set forth herein.

6 81. Labor Code § 226(a) requires Defendants to provide each employee with an
7 accurate wage statement in writing showing nine pieces of information, including, the
8 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
9 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
10 basis, (4) all deductions, provided that all deductions made on written orders of the employee
11 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
12 period for which the employee is paid, (7) the name of the employee and the last four digits of
13 his or her social security number or an employee identification number other than a social
14 security number, (8) the name and address of the legal entity that is the employer, and (9) all
15 applicable hourly rates in effect during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee.

17 82. During the relevant time period, Defendants have knowingly and intentionally
18 failed to comply with Labor Code § 226(a) on wage statements that were provided to Plaintiff
19 and Class Members. The deficiencies include, among other things, the failure to correctly state
20 the gross and net wages earned, total hours worked, all applicable hourly rates in effect, and the
21 number of hours worked at each hourly rate by Plaintiff and Class Members.

22 83. As a result of Defendants' knowing and intentional failure to comply with Labor
23 Code § 226(a), Plaintiff and Class Members have suffered injury and damage to their
24 statutorily-protected rights. Specifically, Plaintiff and Class Members are deemed to suffer an
25 injury pursuant to Labor Code § 226(e) where, as here, Defendants intentionally violated Labor
26 Code § 226(a). Plaintiff and Class Members were denied both their legal right to receive, and
27 their protected interest in receiving, accurate itemized wage statements under Labor Code
28 § 226(a). In addition, because Defendants failed to provide the accurate rates of pay on wage

1 statements, Defendants prevented Plaintiff and Class Members from determining if all hours
2 worked were paid at the appropriate rate and the extent of the underpayment. Plaintiff has had
3 to file this lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff
4 to incur expenses and lost time. Plaintiff would not have had to engage in these efforts and
5 incur these costs had Defendants provided the accurate hours worked, wages earned, and rates
6 of pay. This has also delayed Plaintiff's ability to demand and recover the underpayment of
7 wages from Defendants.

8 84. Plaintiff and Class Members are entitled to recover from Defendants the greater
9 of all actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or
10 fifty dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred
11 dollars (\$100.00) per employee for each violation in subsequent pay periods in an amount not
12 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

13 85. Defendants' violations of California Labor Code § 226(a) prevented Plaintiff
14 and Class Members from knowing, understanding, and disputing the wages paid to them and
15 resulted in an unjustified economic enrichment to Defendants. As a result of Defendants'
16 knowing and intentional failure to comply with California Labor Code § 226(a), Plaintiff and
17 Class Members have suffered an injury, in the exact amount of damages and/or penalties to be
18 shown according to proof at trial.

19 86. Plaintiff and Class Members are also entitled to injunctive relief under
20 California Labor Code § 226(h), compelling Defendants to comply with California Labor Code
21 § 226. Accordingly, Plaintiff and Class Members seek the recovery of attorneys' fees and costs
22 incurred in obtaining this injunctive relief.

23 SEVENTH CAUSE OF ACTION

24 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

25 (Violation of Labor Code §§ 201, 202, and 203; Violation of IWC Wage Order)

26 87. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
27 though fully set forth herein.
28

88. Labor Code §§ 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of an intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

89. During the relevant time period, Defendants willfully failed to pay the Waiting Time Subclass all their earned wages upon termination, including, but not limited to, proper minimum wage and overtime compensation, meal period premiums, and rest period premiums either at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ.

90. Defendants' failure to pay the Waiting Time Subclass all their earned wages at the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is in violation of Labor Code §§ 201 and 202.

91. Labor Code § 203 provides that if an employer willfully fails to pay wages owed immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202, then the wages of the employee shall continue as a penalty from the due date at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

92. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover from Defendants the statutory penalty, which is defined as the Waiting Time Subclass members' regular daily wages at their regular hourly rate of pay for each day they were not paid, up to a maximum of thirty (30) days.

SIXTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

93. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

1 94. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of
2 unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice .
3 ...”

4 95. A violation of California Business and Professions Code §§ 17200, *et seq.*, may
5 be predicated on a violation of any state or federal law. In the instant case, Defendants’ policies
6 and practices violated state law, causing Plaintiff and Class Members to suffer and continue to
7 suffer injuries-in-fact.

8 96. Defendants’ policies and practices violated state law in at least the following
9 respects:

- 10 (a) Failing to pay all wages earned (including minimum wage and overtime
11 wages) to Plaintiff and Class Members in violation of Labor Code §§
12 510, 1182.12, 1194, 1194.2, 1197, and 1198.
- 13 (b) Failing to provide compliant meal periods without paying Plaintiff and
14 Class Members premium wages for every day said meal periods were not
15 provided in violation of Labor Code §§ 226.7 and 512.
- 16 (c) Failing to authorize or permit compliant rest breaks without paying
17 Plaintiff and Class Members premium wages for every day said rest
18 breaks were not authorized or permitted in violation of Labor Code §
19 226.7.
- 20 (d) Failing to reimburse employees for necessary business-related costs in
21 violation of Labor Code § 2802.
- 22 (e) Failing to provide Plaintiff and Class Members with accurate itemized
23 wage statements in violation of Labor Code § 226.
- 24 (f) Failing to timely pay all earned wages to the members of the Waiting
25 Time Subclass upon separation of employment in violation of Labor
26 Code §§ 201, 202, and 203.

27 97. As alleged herein, Defendants systematically engaged in unlawful conduct in
28 violation of the California Labor Code and IWC Wage Orders, such as failing to pay minimum

1 and overtime wages for all hours worked, failing to provide meal periods and rest breaks or
2 compensation in lieu thereof, failing to reimburse necessary business-related costs and
3 expenses, failing to furnish accurate wage statements, and failing to pay all wages due and
4 owing upon separation of employment in a timely manner to the Waiting Time Subclass, all in
5 order to decrease their costs of doing business and increase their profits.

6 98. At all relevant times herein, Defendants held themselves out to Plaintiff and
7 Class Members as being knowledgeable concerning the labor and employment laws of
8 California.

9 99. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
10 and Class Members wages and monies, thereby creating for Defendants an artificially lower
11 cost of doing business in order to undercut their competitors and establish and/or gain a greater
12 foothold in the marketplace.

13 100. As a result of Defendants' intentional, willful, purposeful, and wrongful
14 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
15 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
16 according to proof at trial.

17 101. By violating the foregoing statutes and regulations as herein alleged,
18 Defendants' acts constitute unfair and unlawful business practices under California Business
19 and Professions Code §§ 17200, *et seq.*

20 102. As a result of the unfair and unlawful business practices of Defendants as
21 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
22 restitution in an amount to be shown according to proof at trial.

23 103. Plaintiff seeks to enforce important rights affecting the public interest within the
24 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
25 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
26 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
27 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
28 Procedure § 1021.5.

1 **PRAYER FOR RELIEF**

2 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
3 and judgment against Defendants, jointly and severally, as follows:

4 1. For certification under California Code of Civil Procedure § 382 of the proposed
5 Class, Waiting Time Subclass, and any other appropriate subclasses;

6 2. For appointment of Efrain Penaloza as the class representative;

7 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

8 4. For compensatory damages in an amount according to proof at trial;

9 5. For an award of damages in the amount of unpaid compensation including, but
10 not limited to, unpaid wages, benefits, and penalties;

11 6. For economic and/or special damages in an amount according to proof at trial;

12 7. For statutory penalties to the extent permitted by law, including those pursuant
13 to the Labor Code and IWC Wage Orders;

14 8. For injunctive relief as provided by the California Labor Code and California
15 Business and Professions Code §§ 17200, *et seq.*;

16 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

17 10. For an order requiring Defendants to restore and disgorge all funds to each
18 employee acquired by means of any act or practice declared by this Court to be unlawful,
19 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
20 Professions Code §§ 17200, *et seq.*;

21 11. For pre-judgment interest;

22 12. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
23 by law, including, but not limited to, Code of Civil Procedure § 1021.5 and Labor Code §§
24 226(e) and 2802(b-c); and

25 ///

26 ///

27 ///

28 ///

1 13. For such other relief as the Court deems just and proper.

2

3 Dated: January 6, 2020

AEGIS LAW FIRM, PC

4

By: 

5

Jessica L. Campbell

6

Attorneys for Plaintiff Efrain Penaloza

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DEMAND FOR JURY TRIAL

10 Plaintiff hereby demands a jury trial with respect to all issues triable of right by jury.

11

12 Dated: January 6, 2020

AEGIS LAW FIRM, PC

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By: 

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Jessica L. Campbell

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Attorneys for Plaintiff Efrain Penaloza

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