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on behalf of himself and others similarly situated.

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF LOS ANGELES**

BY FAX

10
11 ALFREDO TORRES, on behalf of himself and
others similarly situated,

12
13 PLAINTIFF,

14 vs.

15
16 RITE-WAY MEAT PACKERS, INC. and
17 DOES 1 to 100, Inclusive,

18 DEFENDANTS.
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Case No.: 20STCV04672

CLASS ACTION

[Assigned for all purposes to Hon. Kenneth R.
Freeman, SSC Dept. 14]

**PLAINTIFF ALFREDO TORRES' FIRST
AMENDED COMPLAINT FOR
DAMAGES AND RESTITUTION AND
FOR:**

1. **FAILURE TO PAY WAGES FOR
ALL TIME WORKED AT
MINIMUM WAGE IN VIOLATION
OF LABOR CODE SECTIONS 1194
AND 1197**
2. **FAILURE TO PAY PROPER
OVERTIME WAGES FOR DAILY
OVERTIME HOURS WORKED
AND ALL HOURS WORKED IN
VIOLATION OF LABOR CODE
SECTIONS 510, 1194, AND 1198**
3. **FAILURE TO AUTHORIZE OR
PERMIT MEAL PERIODS IN
VIOLATION OF LABOR CODE
SECTIONS 512 AND 226.7**
4. **FAILURE TO AUTHORIZE OR
PERMIT REST PERIODS IN
VIOLATION OF LABOR CODE**

SECTION 226.7

- 5. FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS IN VIOLATION OF LABOR CODE SECTION 226**
- 6. FAILURE TO TIMELY PAY ALL EARNED WAGES AND FINAL PAYCHECKS DUE AT TIME OF SEPARATION OF EMPLOYMENT IN VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**
- 7. UNFAIR BUSINESS PRACTICES, IN VIOLATION OF BUSINESS AND PROFESSIONS CODE SECTION 17200, *et seq.***
- 8. CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698, *et seq.***

DEMAND FOR JURY TRIAL

COMES NOW Plaintiff ALFREDO TORRES ("Plaintiff"), who alleges and complains against Defendants RITE-WATIFF AAT PACKERS, INC. and DOES 1 to 100, inclusive (collectively "Defendants") as follows: **BY ME**

I. INTRODUCTION

1. This is a class action lawsuit seeking unpaid wages and interest thereon due to Defendants' failure to pay for activities worked at minimum wage and overtime hours worked at the overtime rate of pay; failure to honorize or permit legally compliant first meal periods; failure to authorize or permit legally compliant rest periods; statutory penalties for failure to provide accurate wage statements; waiting time penalties in the form of continuation wages for failure to timely pay employees all wages due upon separation of employment; injunctive relief and other equitable relief; reasonable attorney's fees pursuant to California Labor Code sections 226(e) and 1194; costs; and interest brought on behalf of Plaintiff and others similarly situated.

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1 **II. JURISDICTION AND VENUE**

2 2. This Court has jurisdiction over Plaintiff's and the Class Members' claims because
3 Plaintiff's lawsuit seeks permanent injunction and damages for himself and the class in excess of
4 \$25,000 and Defendants employed class members and injuries occurred in California including in
5 Los Angeles County at 5151 Alcoa Avenue, Vernon, CA 90058.

6 **III. PARTIES**

7 3. Plaintiff brings this action on behalf of himself and other members of the general
8 public similarly-situated. The named Plaintiff and the class of persons on whose behalf this action is
9 filed are current, former and/or future employees of Defendants who worked, work, or will work for
10 Defendants as California-based non-exempt hourly employees. At all times mentioned herein, the
11 currently named Plaintiff is and was a resident of California and were employed by Defendants within
12 the four years prior to the filing of the Complaint. Defendants employed Plaintiff as an hourly non-
13 exempt employee from May 3, 1999 to February 6, 2019.

14 4. Plaintiff is informed and believes, and on that basis alleges that Defendants employed
15 Plaintiff and other hourly non-exempt employees throughout the State of California and therefore its
16 conduct forms a significant basis of the claims asserted in this matter.

17 5. Plaintiff is informed and believes and thereon alleges that Defendants RITE-WAY
18 MEAT PACKERS, INC. and DOES 1 - 50 are authorized to do business within the State of California
19 and are doing business in the State of California and/or that Defendants DOES 1 - 50 are, and at all
20 times relevant hereto were persons acting on behalf of Defendants in the establishment of, or
21 ratification of, the aforementioned illegal wage and hour practices or policies. Defendants RITE-
22 WAY MEAT PACKERS, INC. and DOES 1 - 50 operate in Los Angeles County and employed
23 Plaintiff and other putative class members in Los Angeles County at its business located at 5151
24 Alcoa Avenue, Vernon, CA 90058.

25 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51 - 100
26 are individuals unknown to Plaintiff. Each individual Defendant is sued individually in his or her
27 capacity as an agent, shareholder, owner, representative, manager, supervisor, independent contractor
28 and/or employee of each Defendant and participated in the establishment of, or ratification of, the

1 aforementioned illegal wage and hour practices or policies.

2 7. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
3 sues said Defendants by said fictitious names and will amend this Complaint when the true names
4 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as permitted
5 by law or by the Court. Plaintiff is informed and believes that each of the fictitiously named
6 Defendants is in some manner responsible for the events and allegations set forth in this Complaint.

7 8. Plaintiff is informed, believes, and thereon alleges that at all relevant times, each
8 Defendant was an employer, was the principal, agent, partner, joint venturer, officer, director,
9 controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest and/or
10 predecessor in interest of some or all of the other Defendants, and was engaged with some or all of
11 the other Defendants in a joint enterprise for profit, and bore such other relationships to some or all
12 of the other Defendants so as to be liable for their conduct with respect to the matters alleged in this
13 Complaint. Plaintiff is further informed and believes and thereon alleges that each Defendant acted
14 pursuant to and within the scope of the relationships alleged above, and that at all relevant times, each
15 Defendant knew or should have known about, authorized, ratified, adopted, approved, controlled,
16 aided and abetted the conduct of all other defendants. As used in this Complaint, "Defendants" means
17 "Defendants and each of them," and refers to the Defendants named in the particular cause of action
18 in which the word appears and includes RITE-WAY MEAT PACKERS, INC. and DOES 1 to 100,
19 inclusive.

20 9. At all times mentioned herein, each Defendant was the co-conspirator, agent, servant,
21 employee, and/or joint venturer of each of the other Defendants and was acting within the course and
22 scope of said conspiracy, agency, employment, and/or joint venture and with the permission and
23 consent of each of the other Defendants.

24 10. Plaintiff makes the allegations in this Complaint without any admission that, as to any
25 particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff
26 reserves all of Plaintiff rights to plead in the alternative.

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1 **IV. DESCRIPTION OF ILLEGAL PAY PRACTICES**

2 11. Pursuant to Industrial Welfare Commission (“IWC”) Wage Order 8 (“Wage Order”),
3 codified at California Code of Regulations title 8, section 11080. Defendants are employers of
4 Plaintiff within the meaning of Wage Order 8 and section 18 of the California Labor Code. Therefore,
5 each of these Defendants is jointly and severally liable for the wrongs complained of herein in
6 violation of the Wage Order and the California Labor Code.

7 12. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants
8 employed many of their employees, including Plaintiff, as hourly non-exempt employees. In
9 California, an employer is required to pay hourly employees for all “hours worked,” which includes
10 all time that an employee is under control of the employer and all time the employee is suffered and
11 permitted to work. This includes the time an employee spends, either directly or indirectly, performing
12 services which inure to the benefit of the employer.

13 13. California Labor Code sections 1194 and 1197 require an employer to compensate
14 employees for all “hours worked” at least at a minimum wage rate of pay as established by the
15 Industrial Welfare Commission (“IWC”) and the Wage Orders.

16 14. Plaintiff and similarly situated employees worked more minutes per shift than
17 Defendants credited them with having worked. Specifically, Defendants “rounded” down or
18 “shaved” Plaintiff’s and similarly situated employees’ total daily hours worked at the time of their
19 clock-in and clock-out to the nearest quarter of an hour, to the benefit of Defendants. Second,
20 Defendants automatically deducted 30 minutes from Plaintiff’s and similarly situated employees’
21 daily hours worked and attributed that time to a first meal period, even though Defendants routinely
22 provided Plaintiff’ and similarly situated employees first meal periods of less than 30 minutes, late
23 meal periods or no first meal periods at all. Plaintiff and similarly situated employees were not paid
24 for this time.

25 15. Despite the fact that California law requires employers to pay employees for all hours
26 worked at least at a minimum wage rate, because Defendants required Plaintiff and similarly situated
27 employees to work off-the-clock as described above, the foregoing resulted in Plaintiff and similarly
28 situated employees working time for which they were not compensated any wages, in violation of

1 California Labor Code sections 1194, 1197, and the Wage Orders.

2 16. **Failure to pay wages for all hours worked in excess of eight hours per day at the**
3 **employees' overtime rate of pay:** As described above, Defendants' policies, practices, and
4 procedures resulted in time each workday where Plaintiff and similarly situated employees were
5 under the control of Defendants but were not compensated for that time.

6 17. California Labor Code sections 510 and 1194 require an employer to compensate
7 employees a higher rate of pay for hours worked in excess of eight hours in a workday:

8 Any work in excess of eight hours in one workday and any work in excess of 40 hours
9 in any one workweek and the first eight hours worked on the seventh day of work in
10 any one workweek shall be compensated at the rate of no less than one and one-half
11 times the regular rate of pay for an employee. Any work in excess of 12 hours in one
12 day shall be compensated at the rate of no less than twice the regular rate of pay for
13 an employee. In addition, any work in excess of eight hours on any seventh day of a
14 workweek shall be compensated at the rate of no less than twice the regular rate of pay
15 of an employee.

16 (Cal. Lab. Code §510.)

17 18. Despite that California law requires employers to pay employees a higher rate of pay
18 for all hours worked more than 8 hours in a workday and 40 hours in a workweek, Defendants failed
19 to pay Plaintiff and similarly situated employees overtime wages due them for their daily overtime
20 hours worked.

21 19. Specifically, Defendants "rounded" down or "shaved" Plaintiff's and similarly
22 situated employees' total daily hours worked at the time of their clock-in and clock-out to the nearest
23 quarter of an hour, to the benefit of Defendants. Plaintiff and similarly situated employees were not
24 paid for this time.

25 20. In addition, Defendants automatically deducted 30 minutes from Plaintiff's and
26 similarly situated employees' daily hours worked and attributed that time to a first meal period, even
27 though Defendants routinely provided Plaintiff and similarly situated employees first meal periods of
28 less than 30 minutes, late meal periods or no first meal periods at all. The foregoing resulted in time
during each workday which Plaintiff and similarly situated employees were under control of
Defendants, but were not compensated at their overtime rate of pay when they worked more than

1 eight hours in a day or 40 hours in a week, in violation of Labor Code sections 510, 1194, and the
2 Wage Order.

3 21. **Failure to pay hourly employees wages to compensate them for workdays**
4 **Defendants failed to provide required meal periods:** California law requires an employer to
5 authorize or permit an employee an uninterrupted meal period of no less than 30-minutes in which
6 the employee is relieved of all duties and the employer relinquishes control over the employee's
7 activities prior to the employee's sixth hour of work. Cal. Lab. Code §§ 226.7, 512; Wage Order 8-
8 2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may
9 not employ an employee for a work period of more than 10 hours per day without providing the
10 employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh
11 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
12 shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal
13 period is only permitted when: (1) the nature of the work prevents an employee from being relieved
14 of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an
15 employer fails to provide an employee a meal period in accordance with the law, the employer must
16 pay the employee one hour of pay at the employee's regular rate of pay for each workday that a legally
17 required meal period was not timely provided or was not duty-free. *Id.*

18 22. During the four years prior to the filing of the complaint, Plaintiff and similarly
19 situated employees would work on workdays in shifts long enough to entitle them to both first and
20 second meal periods under California law. Despite the fact that California law requires employers to
21 authorize or permit a first meal period prior to their sixth hour of work when they worked shifts more
22 than five hours in length and a second off duty unpaid 30 minute meal period for when they worked
23 shifts over 10 hours in length, Defendants routinely failed to authorize or permit first meal periods
24 prior to employees' sixth hour of work and failed to authorize or permit second meal periods
25 altogether when employees worked shifts of more than 10 hours.

26 23. Plaintiff and similarly situated employees were not given an uninterrupted 30-minute
27 meal break for every five hours of work because Defendants' systematic company policy pressured
28 and/or required employees to work without receiving meal periods, or the meal breaks were

1 interrupted, untimely, taken while working, and/or were shorter than 30 minutes. Nevertheless,
2 Defendants automatically deducted 30 minutes from Plaintiff's and similarly situated employees'
3 daily hours worked and attributed that time to a first meal period.

4 24. Defendants also failed to pay Plaintiff and similarly situated employees one hour of
5 pay at their regular rate of pay for each workday Plaintiff and similarly situated employees did not
6 receive all legally compliant meal periods. Defendants lacked a policy and procedure for
7 compensating Plaintiff and similarly situated employees with premium wages when they did not
8 receive all legally required meal periods in a legally compliant manner.

9 25. This practice resulted in Plaintiff and similarly situated employees not receiving wages
10 to compensate them for workdays during which Defendants did not provide them with legally
11 compliant meal periods in compliance with California law.

12 26. **Failure to pay hourly employees wages to compensate them for workdays**
13 **Defendants failed to provide required rest periods:** California law requires an employer to provide
14 an employee a rest period of ten (10) net minutes for every four hours worked, "which insofar as
15 practicable shall be in the middle of each work period." Cal. Lab. Code §226.7; Wage Order 8. Thus,
16 employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20
17 minutes for shifts between six and ten hours in length, 30 minutes for shifts between 10 and 14 hours
18 in length, and so on. *See Brinker, supra*. If the employer fails to provide a required rest period, the
19 employer must pay the employee one hour of pay at the employee's regular rate of compensation for
20 each workday the employer did not provide all legally required rest periods. *Id.*

21 27. During the four years prior to the filing of the complaint, Plaintiff and similarly
22 situated employees regularly worked shifts of more than 3.5 hours. Nevertheless, Plaintiff and
23 similarly situated employees were not given an uninterrupted 10-minute rest period for shifts from
24 three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours,
25 or 30 minutes for shifts of more than 10 hours up to 14 hours because Defendants' systematic
26 company policy pressured and/or required employees to work without receiving rest periods, or the
27 rest breaks were interrupted or were untimely.

28 28. Defendants also failed to pay employees one hour of pay at their regular rate of pay

1 for each workday Plaintiff and similarly situated employees did not receive all timely and legally
2 compliant rest periods. Defendants lacked a policy and procedure for compensating Plaintiff and
3 similarly situated employees with premium wages when they did not receive legally compliant rest
4 periods.

5 29. This practice resulted in Plaintiff and similarly situated employees not receiving wages
6 to compensate them for workdays which Defendants did not provide them with rest periods in
7 compliance with California law.

8 30. **Pay Stub Violations:** California Labor Code section 226(a) provides, *inter alia*, that,
9 upon paying an employee his or her wages, the employer must “furnish each of his or her employees
10 ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
11 employee, except for any employee whose compensation is solely based on a salary and who is
12 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the
13 Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece
14 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions
15 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
16 earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the
17 employee and his or her social security number, (8) the name and address of the legal entity that is
18 the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
19 number of hours worked at each hourly rate by the employee.”

20 31. Defendants failed to provide accurate wage and hour statements to Plaintiff and
21 similarly situated employees who were subject to Defendants’ control for uncompensated time and
22 who did not receive the wages they earned (including minimum wages, overtime wages, as well as
23 failure to pay premium wages for missed meal and rest periods).

24 32. **Failure to Pay California Employees All Wages Due at Time of**
25 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
26 employee’s employment ends. The wages are due immediately upon termination (California Labor
27 Code section 201) or within 72 hours of resignation (California Labor Code section 202).

28 33. Because Defendants failed to pay Plaintiff and similarly situated employees all their

1 earned wages (including minimum wages, overtime wages, and unpaid meal and rest period premium
2 wages), Defendants failed to pay those employees timely after each employee's termination and/or
3 resignation.

4 **V. CLASS DEFINITIONS AND CLASS ALLEGATIONS**

5 34. Plaintiff brings this action on behalf of himself, on behalf of all others similarly
6 situated, and on behalf of the General Public, and as a member of a Class defined as follows:

7 A. **Minimum Wage Class:** All current and former hourly non-exempt employees
8 employed by Defendants in California at any time within the four years prior to the filing of the initial
9 complaint in this action and through the date notice is mailed to a certified class who were not paid
10 at least at minimum wage for all time they were subject to Defendants' control.

11 B. **Overtime Class:** All current and former hourly non-exempt employees
12 employed by Defendants in California at any time within the four years prior to the filing of the initial
13 complaint in this action and through the date notice is mailed to a certified class who worked more
14 than eight hours in a day to whom Defendants did not pay all overtime wages earned.

15 C. **Meal Period Class:** All current and former non-exempt, hourly employees
16 employed by Defendants in California at any time within the four years prior to the filing of the initial
17 complaint in this action and through the date notice is mailed to a certified class who worked shifts
18 greater than 5 hours in a workday and did not receive wages to compensate them for missed meal
19 periods, late meal periods, interrupted meal periods, meal periods taken onsite and/or short meal
20 periods.

21 D. **Rest Period Class:** All current and former hourly non-exempt employees
22 employed by Defendants in California at any time within the four years prior to the filing of the initial
23 complaint in this action and through the date notice is mailed to a certified class who worked at least
24 three and one-half (3.5) or more hours in day who did not receive required rest periods of ten net
25 minutes rest time for every four hours worked between three and one-half and six hours, six and ten
26 hours, or ten and fourteen hours.

27 E. **Wage Statement Class:** All current and former hourly non-exempt employees
28 employed by Defendants in California at any time within the one year prior to the filing of the initial

1 complaint in this action and through the date notice is mailed to a certified class who received
2 inaccurate or incomplete wage and hour statements.

3 F. **Waiting Time Class:** All current and former hourly non-exempt employees
4 employed by Defendants in California at any time within the three years prior to the filing of the
5 initial complaint in this action and through the date notice is mailed to a certified class who did not
6 receive payment of all unpaid wages upon separation of employment within the statutory time period.

7 G. **California Class:** All aforementioned classes are here collectively referred to
8 as the "California Class."

9 35. There is a well defined community of interest in the litigation and the classes are
10 ascertainable:

11 A. **Numerosity:** While the exact number of class members in each class is
12 unknown to Plaintiff at this time, the Plaintiff classes are so numerous that the individual joinder of
13 all members is impractical under the circumstances of this case.

14 B. **Common Questions Predominate:** Common questions of law and fact exist
15 as to all members of the Plaintiff classes and predominate over any questions that affect only
16 individual members of each class. The common questions of law and fact include, but are not limited
17 to:

18 i. Whether Defendants violated California Labor Code sections 1194 and
19 1197 by not paying employees' wages at a minimum wage rate for all time that the Minimum Wage
20 Class Members were subject to Defendants' control but were not paid;

21 ii. Whether Defendants violated California Labor Code Sections 510 and
22 1194 by not paying employees' wages at an overtime wage rate for all overtime hours that the
23 Overtime Class Members were subject to Defendants' control;

24 iii. Whether Defendants violated California Labor Code sections 512 and
25 226.7, as well as the applicable Wage Order, by employing Meal Period Class Members without
26 providing all their required meal periods or paying meal period premium wages;

27 iv. Whether Defendants violated the Wage Order and California Labor
28 Code section 226.7 and the applicable Wage Order by employing Rest Period Class Members without

1 providing all their required rest periods or paying rest period premium wages;

2 v. Whether Defendants failed to provide the Wage Statement Class
3 Members with accurate itemized statement at the time they received their itemized statements;

4 vi. Whether Defendants failed to provide the Waiting Time Class
5 Members with all of their earned wages upon separation of employment within the statutory time
6 period;

7 vii. Whether Defendants committed unlawful business acts or practice
8 within the meaning of Business and Professions Code section 17200 *et seq.*;

9 viii. Whether Class Members are entitled to unpaid wages, penalties and
10 other relief pursuant to their claims;

11 ix. Whether, as a consequence of Defendant's unlawful conduct, the Class
12 Members are entitled to restitution, and/or equitable relief; and

13 x. Whether Defendant's affirmative defenses, if any, raise any common
14 issues of law or fact as to Plaintiff and as to the Class Members as a whole.

15 C. **Typicality:** Plaintiff's claims are typical of the claims of the class members in
16 each of the classes. Plaintiff and the members of the Minimum Wage Class sustained damages arising
17 out of Defendant's failure to pay wages at least at minimum wage for all time the employees were
18 subject to Defendant's control. Plaintiff and the members of the Overtime Wage Class sustained
19 damages arising out of Defendant's failure to pay overtime wages for overtime hours worked.
20 Plaintiff and the members of the Meal Period Class sustained damages arising out of Defendant's
21 failure to provide employees all legally required meal periods and failure to pay meal period premium
22 wages as compensation. Plaintiff and the members of the Rest Period Class sustained damages arising
23 out of Defendants' failure to provide employees all legally required rest periods and failure to pay
24 rest period premium wages as compensation. Plaintiff and the members of the Wage Statement Class
25 sustained damages arising out of Defendants' failure to furnish them with accurate itemized wage
26 statements in compliance with California Labor Code section 226. Plaintiff and the members of the
27 Waiting Time Class sustained damages arising out of Defendants' failure to provide all unpaid yet
28 earned wages due upon separation of employment within the statutory time limit.

1 D. **Adequacy of Representation:** Plaintiff will fairly and adequately protect the
2 interests of the members of each class. Plaintiff has no interest that is adverse to the interests of the
3 other class members.

4 E. **Superiority:** A class action is superior to other available means for the fair
5 and efficient adjudication of this controversy. Because individual joinder of all members of each class
6 is impractical, class action treatment will permit a large number of similarly situated persons to
7 prosecute their common claims in a single forum simultaneously, efficiently, and without the
8 unnecessary duplication of effort and expense that numerous individual actions would engender. The
9 expenses and burdens of individual litigation would make it difficult or impossible for individual
10 members of each class to redress the wrongs done to them, while important public interests will be
11 served by addressing the matter as a class action. The cost to and burden on the court system of
12 adjudication of individualized litigation would be substantial, and substantially more than the costs
13 and burdens of a class action. Individualized litigation would also present the potential for
14 inconsistent or contradictory judgments.

15 F. **Public Policy Consideration:** Employers throughout the state violate wage
16 and hour laws. Current employees often are afraid to assert their rights out of fear of direct or indirect
17 retaliation. Former employees fear bringing actions because they perceive their former employers
18 can blacklist them in their future endeavors with negative references and by other means. Class
19 actions provide the class members who are not named in the complaint with a type of anonymity that
20 allows for vindication of their rights.

21 **I. FIRST CAUSE OF ACTION**

22 **FAILURE TO PAY WAGES FOR ALL HOURS OF WORK AT THE LEGAL MINIMUM**
23 **WAGE RATE IN VIOLATION OF LABOR CODE SECTIONS 1194 AND 1197**

24 **(As Against all Defendants and DOE Defendants by the Minimum Wage Class)**

25 36. Plaintiff hereby incorporates the paragraphs above, as if fully set herein by reference.

26 37. At all times relevant to this Complaint, Plaintiff and the members of the Minimum
27 Wage Class were hourly non-exempt employees of Defendant.

28 38. Pursuant to Labor Code sections 1194, 1197, and Wage Orders, Plaintiff and the

1 Minimum Wage Class are entitled to receive wages for all hours worked, i.e., all time subject to
2 Defendants' control, and those wages must be paid at least at the minimum wage rate in effect during
3 the time the employees earned the wages.

4 39. Defendants' payroll policies and procedures required Plaintiff and members of the
5 Minimum Wage Class to be engaged, suffered, or permitted to work without being paid wages for all
6 of the time in which they were subject to Defendants' control.

7 40. Specifically, Defendants "rounded" down or "shaved" Plaintiff's and members of the
8 Minimum Wage Class' total daily hours worked at the time of their clock-in and clock-out to the
9 nearest quarter of an hour, to the benefit of Defendants. Second, Defendants automatically deducted
10 30 minutes from Plaintiff's and members of the Minimum Wage Class' daily hours worked and
11 attributed that time to a first meal period, even though Defendants routinely provided Plaintiff and
12 members of the Minimum Wage Class with first meal periods of less than 30 minutes, late meal
13 periods or no first meal periods at all.

14 41. As a result of Defendants' unlawful conduct, Plaintiff and members of the of the
15 Minimum Wage Class have suffered damages in an amount subject to proof, to the extent that they
16 were not paid wages at a minimum wage rate for all hours worked.

17 42. Pursuant to California Labor Code Sections 1194 and 1194.2, Plaintiff and the
18 members of the Minimum Wage Class members are entitled to recover unpaid minimum wage,
19 interest thereon, liquidated damages in the amount of their unpaid minimum wage, and attorneys'
20 fees and costs.

21 **II. SECOND CAUSE OF ACTION**

22 **FAILURE TO PAY OVERTIME WAGES, IN VIOLATION OF CALIFORNIA LABOR** 23 **CODE SECTIONS 510, 1194 AND 1198**

24 **(As Against all Defendants and DOE Defendants by the Overtime Class)**

25 43. Plaintiff hereby incorporates the paragraphs above, as if fully set herein by reference.

26 44. At times relevant to this Complaint, Plaintiff and the members of the Overtime Class
27 were hourly non-exempt employees of Defendants, covered by California Labor Code sections 510
28 and 1194 and the Wage Order.

1 45. Pursuant to California Labor Code sections 510 and 1194 and the Wage Order, hourly
2 non-exempt employees are entitled to receive a higher rate of pay for all hours worked in excess of
3 eight hours in a workday and/or 40 hours in a workweek.

4 46. California Labor Code section 510, subdivision (a), states in relevant part:

5 Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one
6 workday and any work in excess of 40 hours in any one workweek and the first eight
7 hours worked on the seventh day of work in any one workweek shall be compensated
8 at the rate of no less than one and one-half times the regular rate of pay for an employee.
9 Any work in excess of 12 hours in one day shall be compensated at the rate of no less
10 than twice the regular rate of pay for an employee. In addition, any work in excess of
11 eight hours on any seventh day of a workweek shall be compensated at the rate of no
12 less than twice the regular rate of pay of an employee. Nothing in this section requires
13 an employer to combine more than one rate of overtime compensation in order to
14 calculate the amount to be paid to an employee for any hour of overtime work.

15 47. Further, California Labor Code section 1198 provides

16 The maximum hours of work and the standard conditions of labor fixed by the
17 commission shall be the maximum hours of work and the standard conditions of labor
18 for employees. The employment of any employee for longer hours than those fixed by
19 the order or under conditions of labor prohibited by the order is unlawful.

20 48. Despite that California law requires employers to pay employees a higher rate of pay
21 for all hours worked more than eight hours in a workday, Defendants failed to pay Plaintiff and
22 members of the Overtime Class overtime wages due them for their daily overtime hours worked.

23 49. Specifically, Defendants "rounded" down or "shaved" Plaintiff's and members of the
24 Overtime Wage Class' total daily hours worked at the time of their clock-in and clock-out to the
25 nearest quarter of an hour, to the benefit of Defendants. Second, Defendants automatically deducted
26 30 minutes from Plaintiff's and members of the Overtime Class' daily hours worked and attributed
27 that time to a first meal period, even though Defendants routinely provided Plaintiff and members of
28 the Overtime Class with first meal periods of less than 30 minutes, late meal periods or no first meal
periods at all.

 50. The foregoing resulted in time during each workday which Plaintiff and members of
the Overtime Class were under control of Defendants but were not compensated at their overtime rate
of pay when they worked more than eight hours in a day or 40 hours in a week.

1 51. Pursuant to California Labor Code section 1194, Plaintiff and the Overtime Class
2 members are entitled to recover the full amount of their unpaid overtime wages, prejudgment interest
3 and attorneys' fees and costs.

4 52. Pursuant to California Labor Code section 1194, Plaintiff and the members of the
5 Overtime Class are entitled to recover the full amount of their unpaid overtime wages, prejudgment
6 interest and attorneys' fees and costs.

7 **III. THIRD CAUSE OF ACTION**

8 **FAILURE TO PROVIDE REQUIRED MEAL PERIODS IN VIOLATION OF**
9 **CALIFORNIA LABOR CODE SECTIONS 512 AND 226.7 AND THE WAGE ORDER**

10 **(As Against all Defendants and DOE Defendants by the Meal Period Class)**

11 53. Plaintiff hereby incorporate the paragraphs above, as if fully set herein by reference.

12 54. At all times relevant to this Complaint, Plaintiff and the members of the Meal Period
13 Class were non-exempt employees of Defendants in California and covered by California Labor Code
14 sections 226.7, 512, and the Wage Orders.

15 55. California law requires an employer to provide an employee an uninterrupted meal
16 period of no less than 30-minutes before the end of a 5-hour work period. (Lab. Code §512; Wage
17 Order 8, subd. 11.) An employer may not employ an employee for a work period of more than 10
18 hours per day without providing the employee with a second meal period of not less than 30 minutes
19 before the end of the 10th hour of work. (Id.) If an employer fails to provide an employee an
20 uninterrupted, timely meal period in accordance with the law, the employer must pay the employee
21 one hour of pay at the employee's regular rate of compensation for each work day that a legally
22 required meal period was not provided or was not duty free. (Id.)

23 56. Plaintiff and similarly situated employees would work on workdays in shifts long
24 enough to entitle them to both first and second meal periods under California law. Despite the fact
25 that California law requires employers to authorize or permit a first meal period prior to the end of
26 the fifth hour of work when they worked shifts more than five hours in length and a second off duty
27 30 minute meal period for when they worked shifts over 10 hours in length, Defendants routinely
28 failed to authorize or permit first meal periods prior to employees' end of their fifth hour of work and

1 failed to authorize or permit second meal periods altogether when employees worked shifts of more
2 than 10 hours.

3 57. Plaintiff and similarly situated employees were not given an uninterrupted 30-minute
4 meal break for every five hours of work because Defendants' systematic company policy pressured
5 and/or required employees to work without receiving meal periods, or the meal breaks were
6 interrupted, untimely, taken while working, and/or were shorter than 30 minutes. Nevertheless,
7 Defendants automatically deducted 30 minutes from Plaintiff's and similarly situated employees'
8 daily hours worked and attributed that time to a first meal period.

9 58. Defendants also failed to pay Plaintiff and members of the Meal Period Class one hour
10 of pay at their regular rate of pay for each workday Meal Period Class members did not receive all
11 legally compliant meal periods. Defendants lacked a policy and procedure for compensating members
12 of the Meal Period Class with premium wages when they did not receive all legally required meal
13 periods in a legally compliant manner.

14 59. This practice resulted in Plaintiff and members of the Meal Period Class not receiving
15 wages to compensate them for workdays which Defendants did not provide them with legally
16 compliant meal periods in compliance with California law.

17 60. Because Defendants failed to provide proper meal periods, they are liable to Plaintiff
18 and the Meal Period Class Members for one hour of additional pay at the regular rate of compensation
19 for each workday that the proper meal period was not provided, pursuant to California Labor Code
20 sections 512 and 226.7 and the Wage Order.

21 61. Plaintiff, on behalf of himself and the Meal Period Class, seeks damages and all other
22 relief allowable including a meal period premium wage for each workday Defendants failed to
23 provide all required 30-minute uninterrupted meal periods, plus pre-judgment interest.

24 62. In addition, Plaintiff and the Meal Period Class Members are entitled to wages at their
25 regular rate of pay for the time that was deducted from their daily hours worked even though no meal
26 periods were provided during those times.

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IV. FOURTH CAUSE OF ACTION
FAILURE TO PROVIDE REQUIRED REST PERIODS IN VIOLATION OF CALIFORNIA
LABOR CODE SECTION 226.7 AND THE WAGE ORDER
(As Against all Defendants and DOE Defendants by the Rest Period Class)

63. Plaintiff hereby incorporates by reference the above, as if fully set herein.

64. At all relevant times, Plaintiff and the other members of the Rest Period Class were non-exempt, hourly employees of Defendants covered by Labor Code Section 226.7 and the Wage Order.

65. Pursuant to Labor Code Section 226.7 and the Wage Order, Plaintiff and the other members of the Rest Period Class were entitled to receive rest periods of 10-net minutes for every four hours, or major fraction thereof, worked. If Plaintiff and the Rest Period Class did not receive rest periods for every four hours, or major fraction thereof, worked in a day, Defendants were required to pay them one hour of pay at the employee’s regular rate of pay for each workday that the rest period is not provided.

66. During the four years prior to the filing of the complaint, Plaintiff and similarly situated employees regularly worked shifts of more than 3.5 hours. Nevertheless, Plaintiff and similarly situated employees were not given an uninterrupted 10-minute rest period for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, or 30 minutes for shifts of more than 10 hours up to 14 hours because Defendants’ systematic company policy pressured and/or required employees to work without receiving rest periods, or the rest breaks were interrupted or were untimely.

67. Defendants also failed to pay employees one hour of pay at their regular rate of pay for each workday Members of the Rest Period Class did not receive all timely and legally compliant rest periods. Defendants lacked a policy and procedure for compensating Members of the Rest Period Class with premium wages when they did not receive legally compliant rest periods.

68. This practice resulted in Members of the Rest Period Class not receiving wages to compensate them for workdays which Defendants did not provide them with rest periods in compliance with California law.

1 69. Because Defendants failed to provide proper rest periods, they are liable to Plaintiff
2 and the Rest Period Class Members for one hour of additional pay at the regular rate of compensation
3 for each workday that the proper rest period was not provided, pursuant to California Labor Code
4 section 226.7 and the Wage Order.

5 70. Plaintiff, on behalf of himself and the Rest Period Class, seeks damages and all other
6 relief allowable including rest period wages for each workday the employee was not provided with
7 all required rest periods of ten net minutes; and prejudgment interest.

8 **V. FIFTH CAUSE OF ACTION**

9 **FAILURE TO PROVIDE COMPLETE AND ACCURATE WAGE STATEMENTS, IN**
10 **VIOLATION OF LABOR CODE SECTION 226**

11 **(As Against all Defendants and DOE Defendants by the Wage Statement Class)**

12 71. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein
13 by reference.

14 72. At all times relevant to this Complaint, Plaintiff and the other members of the Wage
15 Statement Class were hourly employees of Defendants, covered by California Labor Code section
16 226.

17 73. Pursuant to California Labor Code section 226, subdivision (a), Plaintiff and the other
18 members of the Wage Statement Class were entitled to receive, semimonthly or at the time of each
19 payment of wages, an itemized wage statement accurately stating the following:

20 (1) gross wages earned, (2) total hours worked by the employee, except for any
21 employee whose compensation is solely based on a salary and who is exempt from
22 payment of overtime under subdivision (a) of Section 515 or any applicable order of
23 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any
24 applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions,
25 provided that all deductions made on written orders of the employee may be aggregated
26 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
27 which the employee is paid, (7) the name of the employee and his or her social security
28 number, except that by January 1, 2008, only the last four digits of his or her social
security number or an employee identification number other than a social security
number may be shown on the itemized statement, (8) the name and address of the legal
entity that is the employer, and (9) all applicable hourly rates in effect during the pay
period and the corresponding number of hours worked at each hourly rate by the
employee.

1 74. As a result of the aforementioned conduct (failure to pay wages for all hours worked,
2 failure to pay overtime, and failure to pay meal and rest period premiums), Defendants failed to
3 provide accurate and complete wage statements to Plaintiff and others similarly situated in violation
4 of Labor Code Section 226(a)) because they did not reflect all of the employees' earnings.

5 75. Defendants' failure to provide Plaintiff and members of the Wage Statement Class
6 with accurate wage statements and maintain accurate copies of wage statements was knowing and
7 intentional. Defendants had the ability to provide Plaintiff and members of the Wage Statement Class
8 accurate wage statements and maintain but intentionally provided wage statements that Defendants
9 knew were not accurate.

10 76. As a result of Defendants' conduct, Plaintiff and members of the Wage Statement Class
11 have suffered injury. The absence of accurate information on their wage statements has prevented
12 earlier challenges to Defendants unlawful pay practices, required discovery and mathematical
13 computations to determine the amount of wages owed, caused difficulty and expense in attempting
14 to reconstruct time and pay records, and/or led to the submission of inaccurate information about
15 wages and amounts deducted from wages to state and federal government agencies.

16 77. Pursuant to Labor Code Section 226(e), Plaintiff and members of the Wage Statement
17 Class are entitled to recover fifty (50) dollars for the initial pay period within the applicable limitations
18 period in which a violation of Labor Code Section 226 occurred and one hundred dollars for each
19 violation of Labor Code Section 226 in a subsequent pay period, not to exceed an aggregate penalty
20 of four thousand (\$4,000) dollars per employee.

21 78. Pursuant to Labor Code Section 226, Plaintiff and members of the Wage Statement
22 Class are entitled to recover the full amount of penalties due under Labor Code Section 226(e) and
23 reasonable attorney's fees.

24 79. Pursuant to Labor Code Sections 218 and 226(e), Plaintiff and the members of the
25 Wage Statement Class are entitled to recover the full amount of penalties due under Labor Code
26 Section 226(e), reasonable attorney's fees and costs of suit.

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1 **V. SIXTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES TIMELY UPON SEPARATION OF EMPLOYMENT, IN**
3 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

4 **(As Against all Defendants and DOE Defendants by the Waiting Time Class)**

5 80. Plaintiff hereby incorporates by reference the paragraphs above, as if fully set herein.

6 81. At all relevant times, Plaintiff and the members of the Waiting Time Class were
7 employees of Defendants covered by Labor Code Sections 201 or 202.

8 82. Pursuant to Labor Code Sections 201 or 202, Plaintiff and members of the Waiting
9 Time Class were entitled upon separation of employment to timely payment of all wages earned and
10 unpaid prior to separation of employment. Discharged employees were entitled to payment of all
11 wages earned and unpaid prior to discharge immediately upon termination. Employees who resigned
12 were entitled to payment of all wages earned and unpaid prior to resignation within 72 hours after
13 giving notice of resignation or, if they gave 72 hours previous notice, they were entitled to payment
14 of all wages earned and unpaid prior to resignation at the time of resignation.

15 83. Defendants failed to pay Plaintiff and members of the Waiting Time Class all wages
16 earned and unpaid prior to separation in accordance with Labor Code Sections 201 and/or 202.
17 Plaintiff is informed and believes and thereon alleges that at all relevant times within the limitations
18 period applicable to this cause of action, Defendants maintained a policy or practice which includes
19 and is not limited to failing to pay at least minimum wage for all time worked, failing to pay overtime
20 wages of all overtime hours worked, and failing to pay premium wages for all non-compliant meal
21 and rest periods.

22 84. Defendants' failure to pay Plaintiff and members of the Waiting Time Class all wages
23 earned prior to separation timely in accordance with Labor Code Sections 201 and/or 202 was willful.
24 Defendants had the ability to pay all wages earned by hourly workers prior to separation in accordance
25 with Labor Code Sections 201 and/or 202, but intentionally adopted policies or practices incompatible
26 with the requirements of Labor Code Sections 201 and/or 202. When Defendants failed to pay hourly
27 workers timely upon separation all wages earned prior to separation, Defendants knew what they were
28 doing and intended to do what they did.

1 85. Pursuant to Labor Code Sections 201 or 202, Plaintiff and the members of the Waiting
2 Time Class are entitled to all wages earned prior to separation of employment that Defendants did not
3 pay them.

4 86. Pursuant to Labor Code Section 203, Plaintiff and the members of the Waiting Time
5 Class are entitled to continuation of their wages, from the day their earned and unpaid wages were
6 due upon separation of employment until paid, up to a maximum of 30 days.

7 87. As a result of Defendants' conduct, Plaintiff and the members of the Waiting Time
8 Class have suffered damages in an amount, subject to proof, to the extent they were not paid for all
9 wages earned prior to separation of employment.

10 88. As a result of Defendants' conduct, Plaintiff and the members of the Waiting Time
11 Class have suffered damages in an amount, subject to proof, to the extent they were not paid all
12 continuation wages owed under Labor Code Section 203.

13 89. Pursuant to Labor Code Sections 201, 202, and 203, Plaintiff and members of the
14 Waiting Time Class are entitled to recover the full amount of their unpaid wages, continuation wages
15 under Section 203, interest thereon, reasonable attorney's fees and costs of suit.

16 **VII. SEVENTH CAUSE OF ACTION**

17 **UNFAIR COMPETITION IN VIOLATION OF BUSINESS AND PROFESSIONS CODE**

18 **SECTION 17200, *et seq.***

19 **(Against All Defendants and Doe Defendants by the California Class)**

20 90. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
21 by reference.

22 91. The unlawful conduct of Defendants alleged herein constitute unfair competition
23 within the meaning of California Business and Professions Code Section 17200, *et seq.* This unfair
24 conduct includes Defendants' use of policies and procedures which resulted in: failure to pay
25 employees at least at the minimum wage rate for all hours which they worked; failure to pay overtime
26 wages for overtime hours worked; failure to provide legally complaint meal periods and/or pay meal
27 period premium wages; failure to provide legally complaint rest periods and/or pay rest period
28 premium wages; failure to provide accurate wage statements and failure to timely pay employee all

1 earned and unpaid wages due upon separation of employment.

2 92. Due to their unfair and unlawful business practices in violation of the California Labor
3 Code, as outlined above, Defendants have gained a competitive advantage over other comparable
4 companies doing business in the State of California that comply with their obligations: to pay
5 employees at least at the minimum wage rate for all hours which they worked; to pay overtime wages
6 for overtime hours worked; to provide legally complaint meal periods and/or pay meal period
7 premium wages; to provide legally complaint rest periods and/or pay rest period premium wages; to
8 provide accurate wage statements and to timely pay employee all earned and unpaid wages due upon
9 separation of employment..

10 93. As a result of Defendants' unfair competition as alleged herein, Plaintiff and members
11 of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, Wage Statement
12 Class, and/or Waiting Time Class have suffered injury in fact and lost money or property, as described
13 in more detail above.

14 94. Pursuant to California Business and Professions Code Section 17203, Plaintiff and
15 members of the Minimum Wage Class, Overtime Class, Meal Period Class, Rest Period Class, Wage
16 Statement Class, and/or Waiting Time Class are entitled to restitution of all wages and other monies
17 rightfully belonging to them that Defendants failed to pay and wrongfully retained by means of their
18 unlawful and unfair business practices.

19 95. Plaintiff also seeks an injunction against Defendants on behalf of the California Class
20 enjoining them, and any and all persons acting in concert with them, from engaging in each of the
21 unlawful practices, policies and patterns set forth herein.

22 96. Plaintiff also seeks attorneys' fees and costs of suit, including but not limited to that
23 recoverable under California Code of Civil Procedure Section 1021.5.

24 **EIGHTH CAUSE OF ACTION**

25 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**
26 **GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.**

27 97. Plaintiff hereby incorporates by reference all paragraphs above, as if fully set herein
28 by reference.

1 98. During the period beginning one-year period preceding the sending of the initial notice
2 to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 226, 226.7, 510,
3 512, 1194, and 1197 and as alleged in more detail above.

4 99. Specifically, Defendants have committed the following violations of California Labor
5 Code:

6 (a) **Failure to pay wages for all hours worked at the legal minimum wage:**
7 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees.
8 In California, an employer is required to pay hourly employees for all “hours worked,” which includes
9 all time that an employee is under control of the employer and all time the employee is suffered and
10 permitted to work. This includes the time an employee spends, either directly or indirectly, performing
11 services which inure to the benefit of the employer. California Labor Code sections 1194 and 1197
12 require an employer to compensate employees for all “hours worked” at least at a minimum wage
13 rate of pay as established by the Industrial Welfare Commission (“IWC”) and the Wage Orders.
14 Plaintiff and similarly situated employees worked more minutes per shift than Defendants credited
15 them with having worked. Specifically, Defendants “rounded” down or “shaved” Plaintiff’s and
16 similarly situated employees’ total daily hours worked at the time of their clock-in and clock-out to
17 the nearest quarter of an hour, to the benefit of Defendants. Second, Defendants automatically
18 deducted 30 minutes from Plaintiff’s and similarly situated employees’ daily hours worked and
19 attributed that time to a first meal period, even though Defendants routinely provided Plaintiff and
20 similarly situated employees first meal periods of less than 30 minutes, late meal periods or no first
21 meal periods at all. Plaintiff and similarly situated employees were not paid for this time. Despite
22 the fact that California law requires employers to pay employees for all hours worked at least at a
23 minimum wage rate, because Defendants required Plaintiff and similarly situated employees to work
24 off-the-clock as described above, the foregoing resulted in Plaintiff and similarly situated employees
25 working time for which they were not compensated any wages, in violation of California Labor Code
26 sections 1194, 1197, and the Wage Orders.

27 (b) **Failure to pay wages for all hours worked in excess of eight hours per day**
28 **at the employees’ overtime rate of pay:** As described above, Defendants’ policies, practices, and

1 procedures resulted in time each workday where Plaintiff and similarly situated employees were
2 under the control of Defendants but were not compensated for that time. California Labor Code
3 sections 510 and 1194 require an employer to compensate employees a higher rate of pay for hours
4 worked in excess of eight hours in a workday: “Any work in excess of eight hours in one workday
5 and any work in excess of 40 hours in any one workweek and the first eight hours worked on the
6 seventh day of work in any one workweek shall be compensated at the rate of no less than one and
7 one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day
8 shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In
9 addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated
10 at the rate of no less than twice the regular rate of pay of an employee.” (Cal. Lab. Code §510.)
11 Despite that California law requires employers to pay employees a higher rate of pay for all hours
12 worked more than 8 hours in a workday and 40 hours in a workweek, Defendants failed to pay
13 Plaintiff and similarly situated employees overtime wages due them for their daily overtime hours
14 worked. Specifically, Defendants “rounded” down or “shaved” Plaintiff’s and similarly situated
15 employees’ total daily hours worked at the time of their clock-in and clock-out to the nearest quarter
16 of an hour, to the benefit of Defendants. Plaintiff and similarly situated employees were not paid for
17 this time. In addition, Defendants automatically deducted 30 minutes from Plaintiff’s and similarly
18 situated employees’ daily hours worked and attributed that time to a first meal period, even though
19 Defendants routinely provided Plaintiff and similarly situated employees first meal periods of less
20 than 30 minutes, late meal periods or no first meal periods at all. The foregoing resulted in time during
21 each workday which Plaintiff and similarly situated employees were under control of Defendants, but
22 were not compensated at their overtime rate of pay when they worked more than eight hours in a day
23 or 40 hours in a week, in violation of Labor Code sections 510, 1194, and the Wage Order.

24 (c) **Failure to pay hourly employees wages to compensate them for workdays**
25 **Defendants failed to provide required meal periods:** California law requires an employer to
26 authorize or permit an employee an uninterrupted meal period of no less than 30-minutes in which
27 the employee is relieved of all duties and the employer relinquishes control over the employee’s
28 activities prior to the employee’s sixth hour of work. Cal. Lab. Code §§ 226.7, 512; Wage Order 8-

2001, 11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second such meal period of not less than 30 minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on duty meal periods. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one hour of pay at the employee’s regular rate of pay for each workday that a legally required meal period was not timely provided or was not duty-free. *Id.* During the four years prior to the filing of the complaint, Plaintiff and similarly situated employees would work on workdays in shifts long enough to entitle them to both first and second meal periods under California law. Despite the fact that California law requires employers to authorize or permit a first meal period prior to their sixth hour of work when they worked shifts more than five hours in length and a second off duty unpaid 30 minute meal period for when they worked shifts over 10 hours in length, Defendants routinely failed to authorize or permit first meal periods prior to employees’ sixth hour of work and failed to authorize or permit second meal periods altogether when employees worked shifts of more than 10 hours. Plaintiff and similarly situated employees were not given an uninterrupted 30-minute meal break for every five hours of work because Defendants’ systematic company policy pressured and/or required employees to work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while working, and/or were shorter than 30 minutes. Nevertheless, Defendants automatically deducted 30 minutes from Plaintiff’s and similarly situated employees’ daily hours worked and attributed that time to a first meal period. Defendants also failed to pay Plaintiff and similarly situated employees one hour of pay at their regular rate of pay for each workday Plaintiff and similarly situated employees did not receive all legally compliant meal periods. Defendants lacked a policy and procedure for compensating Plaintiff and similarly situated employees with premium wages when they did not receive all legally required meal periods in a legally compliant manner. This practice resulted in Plaintiff and similarly situated employees not receiving wages to

1 compensate them for workdays during which Defendants did not provide them with legally compliant
2 meal periods in compliance with California law.

3 (d) **Failure to pay hourly employees wages to compensate them for workdays**

4 **Defendants failed to provide required rest periods:** California law requires an employer to provide
5 an employee a rest period of ten (10) net minutes for every four hours worked, “which insofar as
6 practicable shall be in the middle of each work period.” Cal. Lab. Code §226.7; Wage Order 8. Thus,
7 employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in length, 20
8 minutes for shifts between six and ten hours in length, 30 minutes for shifts between 10 and 14 hours
9 in length, and so on. *See Brinker, supra*. If the employer fails to provide a required rest period, the
10 employer must pay the employee one hour of pay at the employee’s regular rate of compensation for
11 each workday the employer did not provide all legally required rest periods. *Id.* During the four years
12 prior to the filing of the complaint, Plaintiff and similarly situated employees regularly worked shifts
13 of more than 3.5 hours. Nevertheless, Plaintiff and similarly situated employees were not given an
14 uninterrupted 10-minute rest period for shifts from three and one-half to six hours in length, 20
15 minutes for shifts of more than six hours up to 10 hours, or 30 minutes for shifts of more than 10
16 hours up to 14 hours because Defendants’ systematic company policy pressured and/or required
17 employees to work without receiving rest periods, or the rest breaks were interrupted or were
18 untimely. Defendants also failed to pay employees one hour of pay at their regular rate of pay for
19 each workday Plaintiff and similarly situated employees did not receive all timely and legally
20 compliant rest periods. Defendants lacked a policy and procedure for compensating Plaintiff and
21 similarly situated employees with premium wages when they did not receive legally compliant rest
22 periods. This practice resulted in Plaintiff and similarly situated employees not receiving wages to
23 compensate them for workdays which Defendants did not provide them with rest periods in
24 compliance with California law.

25 (e) **Pay Stub Violations:** California Labor Code section 226(a) provides, *inter*
26 *alia*, that, upon paying an employee his or her wages, the employer must “furnish each of his or her
27 employees ... an itemized statement in writing showing (1) gross wages earned, (2) total hours worked
28 by the employee, except for any employee whose compensation is solely based on a salary and who

1 is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
2 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece
3 rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all deductions
4 made on written orders of the employee may be aggregated and shown as one item, (5) net wages
5 earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the name of the
6 employee and his or her social security number, (8) the name and address of the legal entity that is
7 the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding
8 number of hours worked at each hourly rate by the employee.” Defendants failed to provide accurate
9 wage and hour statements to Plaintiff and similarly situated employees who were subject to
10 Defendants’ control for uncompensated time and who did not receive the wages they earned
11 (including minimum wages, overtime wages, as well as failure to pay premium wages for missed
12 meal and rest periods).

13 (f) **Failure to Pay California Employees All Wages Due at Time of**
14 **Termination/Resignation:** An employer is required to pay all unpaid wages timely after an
15 employee’s employment ends. The wages are due immediately upon termination (California Labor
16 Code section 201) or within 72 hours of resignation (California Labor Code section 202). Because
17 Defendants failed to pay Plaintiff and similarly situated employees all their earned wages (including
18 minimum wages, overtime wages, and unpaid meal and rest period premium wages), Defendants
19 failed to pay those employees timely after each employee’s termination and/or resignation.

20 (g) Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
21 employee, on behalf of himself or herself and other current or former employees, to bring a civil
22 action to recover civil penalties against all Defendants pursuant to the procedures specified in Labor
23 Code section 2699.3.

24 100. Plaintiff has complied with the procedures for bringing suit specified in Labor Code
25 section 2699.3. Plaintiff filed notice on February 5, 2020 with the Labor and Workforce Development
26 Agency ("LWDA") giving the LWDA written notice of the specific provisions of the Labor Code
27 alleged to have been violated, including the facts and theories to support the alleged violations.
28 Plaintiff sent the notices to Defendants by certified mail. True and correct copies of Plaintiff’s letters

are hereto attached as **Exhibit 1.**

101. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 66 days of the date of the complainant's written notice. LWDA did not provide written notice via certified mail to the parties that it intends to investigate the alleged violations of the Labor Code within 66 days of the date of the complainant's written notice as of the filing of this First Amended Complaint, more than 66 days after the LWDA letter was sent on February 5, 2020.

102. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties and unpaid wages if applicable for Defendants' violations of Labor Code sections 201, 202, 203, 226, 226.7, 510, 512, 1194, and 1197, during the Civil Penalty Period in the following amounts:

(a) For violations of Labor Code sections 201, 202, 203, 226.7, 1197, and 1198; one hundred dollars (\$100) for each employee per pay period for the initial violation and two hundred dollars (\$200) for each employee per pay period for each subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

(b) For violations of Labor Code section 226, subd. (a), two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1,000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

(c) For violations of Labor Code section 226, subd. (a), seven hundred fifty dollars (\$750) for each employee [penalty amounts established by Labor Code sections 226, subd. (f)]

(d) For violations of Labor Code section 510, 512, and 1194, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558]

103. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with his claims for civil penalties.

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1 **PRAYER FOR RELIEF**

2 **WHEREFORE, PLAINTIFF ON HIS OWN BEHALF AND ON BEHALF OF THOSE**
3 **SIMILARLY-SITUATED, PRAYS AS FOLLOWS:**

4 **ON ALL CAUSES OF ACTION:**

5 1. That the Court determine that this action may be maintained as a class action (for the
6 entire California Class and/or any and all of the specified sub-classes) pursuant to California Code of
7 Civil Procedure section 382 and any other applicable law;

8 2. That the named Plaintiff be designated as class representative for the California Class
9 (and all sub-classes thereof);

10 3. A declaratory judgment that the practices complained herein are unlawful; and,

11 4. An injunction against Defendants enjoining them, and any and all persons acting in
12 concert with them, from engaging in each of the unlawful practices, policies and patterns set forth
13 herein.

14 **ON THE FIRST CAUSE OF ACTION:**

15 1. That Defendants be found to have violated the minimum wage provisions of the
16 California Labor Code and the IWC Wage Order as to Plaintiff and the Minimum Wage Class;

17 2. For damages, according to proof, including but not necessarily limited to unpaid
18 wages;

19 3. For any and all legally applicable penalties;

20 4. For liquidated damages pursuant to California Labor Code Section 1194.2;

21 5. For pre-judgment interest, including but not limited to that recoverable under
22 California Labor Code Section 1194, and post-judgment interest;

23 6. For attorneys' fees and costs of suit, including but not limited to that recoverable under
24 California Labor Code Section 1194;

25 7. For such and other further relief, in law and/or equity, as the Court deems just or
26 appropriate.

27 **ON THE SECOND CAUSE OF ACTION:**

28 1. That Defendants be found to have violated the overtime provisions of the California

1 Labor Code and the Wage Order as to Plaintiff and the Overtime Class;

2 2. For damages, according to proof, including but not necessarily limited to unpaid
3 wages;

4 3. For any and all legally applicable penalties;

5 4. For pre-judgment interest, including but not limited to that recoverable under
6 California Labor Code Section 1194, and post-judgment interest;

7 5. For attorneys' fees and costs of suit, including but not limited to that recoverable under
8 California Labor Code Section 1194; and,

9 6. For such and other further relief, in law and/or equity, as the Court deems just or
10 appropriate.

11 **ON THE THIRD CAUSE OF ACTION:**

12 1. That the Defendants be found to have violated the meal period provisions of the Labor
13 Code and the IWC Wages Orders as to the Plaintiff, the Meal Period Class;

14 2. For damages, according to proof, including unpaid wages;

15 3. For any and all legally applicable penalties;

16 4. For pre-judgment interest, including but not limited to that recoverable under
17 California Labor Code section 218.6, and post-judgment interest; and

18 5. For such and other further relief, in law and/or equity, as the Court deems just or
19 appropriate.

20 **ON THE FOURTH CAUSE OF ACTION:**

21 1. That the Defendants be found to have violated the rest period provisions of the Labor
22 Code and the IWC Wages Orders as to Plaintiff and the Rest Period Class;

23 2. For damages, according to proof, including unpaid wages;

24 3. For any and all legally applicable penalties;

25 4. For pre-judgment interest, including but not limited to that recoverable under Labor
26 Code Section 218.6, and post-judgment interest; and

27 5. For such and other further relief, in law and/or equity, as the Court deems just or
28 appropriate.

- 1 4. For restitution to the full extent permitted by law; and
2 5. For such and other further relief, in law and/or equity, as the Court deems just or
3 appropriate.

4 **ON THE EIGHTH CAUSE OF ACTION:**

5 1. That Defendants be found to have violated the provisions of the California Labor Code
6 and Wage Order as to Plaintiff and current or former aggrieved employees;

7 2. For any and all legally applicable penalties, including but not limited to that
8 recoverable under California Labor Code section 2699(f), 201, 202, 203, 226, 226.7, 510, 512, 1194,
9 and 1197.

10 3. For attorneys' fees and costs of suit, including but not limited to that recoverable under
11 California Labor Code section 2699(g); and,

12 4. For such and other further relief, in law and/or equity, as the Court deems just or
13 appropriate.

14 Dated: July 3, 2020

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

16 By: Anwar Burton
17 Joseph Lavi, Esq.
18 Vincent C. Granberry, Esq.
19 Anwar D. Burton, Esq.

Attorneys for PLAINTIFF, ALFREDO
TORRES and Other Class Members

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DEMAND FOR JURY TRIAL

PLAINTIFF ALFREDO TORRES hereby demands a trial by jury for himself and the California Class on all claims so triable.

Dated: July 3, 2020

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

By: Anwar Burton

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Anwar D. Burton, Esq.

Attorneys for PLAINTIFF, ALFREDO
TORRES and Other Class Members

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EXHIBIT 1

LAW OFFICES OF
LAVI & EBRAHIMIAN, LLP
8889 W. OLYMPIC BLVD., SUITE 200
BEVERLY HILLS, CALIFORNIA 90211
TELEPHONE: (310) 432-0000
FACSIMILE: (310) 432-0001
WWW.LELAWFIRM.COM

February 5, 2020

**NOTICE OF LABOR CODE VIOLATIONS PURSUANT TO
LABOR CODE SECTION 2699.3**

To:

CALIFORNIA LABOR AND WORKFORCE DEVELOPMENT AGENCY Attn. PAGA Administrator 1515 Clay Street, Suite 801 Oakland, California 94612 <i>Via Online Submission Only</i>	Department of Industrial Relations Accounting Unit 455 Golden Gate Avenue, 10th Floor San Francisco, California 94102 <u>Certified Mail No.:</u> 7019 0700 0002 2123 0293
RITE-WAY MEAT PACKERS, INC. c/o Alan G. Novodor Agent for Service of Process 11835 W Olympic Blvd. Ste 1125E Los Angeles, CA 90064 <u>Certified Mail No.:</u> 7019 0700 0002 2123 0286	

From: Alfredo Torres, on behalf of himself and all "aggrieved" California-based non-exempt employees of Rite-Way Meat Packers, Inc.

c/o Joseph Lavi, Esq., Vincent C. Granberry, Esq., Anwar D. Burton, Esq. and James Y. Yoo, Esq.
LAVI & EBRAHIMIAN, LLP
8889 West Olympic Boulevard, Suite 200
Beverly Hills, California 90211

My firm has been retained by Mr. Alfredo Torres concerning a wage and hour class action and representative action pursuant to the Private Attorneys General Act of 2004, Lab. Code §2698, *et seq.* ("PAGA") against his former employer Rite-Way Meat Packers, Inc.

Our office is filing this written notice with the Labor and Workforce Development Agency (“LWDA”) pursuant to the provisions of the California Labor Code Sections 2699, 2699.3, and 2698, *et seq.* The purpose of this letter is to inquire whether the LWDA intends to investigate and seek civil penalties associated with my client's allegations of violations of the Labor Code by his employer. In addition to submitting this letter via the online PAGA filing system, I have also mailed a copy of this letter with the \$75.00 filing fee enclosed to Department of Industrial Relations – Accounting Unit.

FACTUAL STATEMENT AND THEORIES OF LABOR CODE VIOLATIONS

Aggrieved employee Alfredo Torres (“Employee”) was employed by Rite-Way Meat Packers, Inc. as an hourly non-exempt employee until in or around February 6, 2019.

Pursuant to *Huff v. Securitas Security Services USA, Inc.*, 25 Cal. App. 5th 745, as an aggrieved employee, Employee intends to pursue penalties for all the Labor Code violations committed by Employers. In *Huff* the court found that PAGA allows an “aggrieved employee” – a person affected by at least one Labor Code violation committed by an employer – to pursue penalties for all the Labor Code violations committed by that employer. **As such, in addition to the violations specifically alleged above, Employee intends to pursue any other Labor Code violations committed by Employers.**

1. Failure to Pay the Minimum Wage Rate of Pay for All Hours Worked & Failure to Pay the Applicable Overtime Rate of Pay for All Overtime Hours Worked

Employee maintains that during his employment, Employers failed to pay Employee’s and other California-based, hourly, non-exempt employees with compensation at the minimum wage rate of pay for all the hours that they worked in violation of Labor Code §§ 1194 and 1197 and compensation at their overtime rate for overtime hours worked in violation of Labor Code §§ 510 and 1194. Labor Code § 1194 states, “...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” Labor Code § 1197 provides, “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

With regard to overtime hours, Labor Code § 510 provides:

“Eight hours of labor constitutes a day’s work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.”

Relatedly, overtime is based upon an employee's regular rate of pay. "The regular rate at which an employee is employed shall be deemed to include all remuneration for employment paid to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement Policies and Interpretations Manual, § 49.1.2. Additionally, Labor Code § 1194 states, "...any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit."

More specifically, Employee maintains that Employers "rounded" down or "shaved" Employee's and other California-based, hourly, non-exempt employees' total daily hours worked at the time of their clock-in and clock-out to the nearest quarter of an hour, to the benefit of Employers. Second, Employee maintains that Employers automatically deducted 30 minutes from Employee's and other California-based hourly non-exempt employees' daily hours worked and attributed that time to a first meal period, even though Employers routinely provided first meal periods of less than 30 minutes, late meal periods, or no first meal periods at all.

The aforementioned practices resulted in Employee and other California-based, hourly, non-exempt employees routinely working off-the-clock without pay. To the extent that the uncompensated time described above resulted in Employee and other California-based, hourly, non-exempt employees being subject to the control of Employers exceeded eight (8) hours in a workday and/or forty (40) hours in a workweek, that time should have been compensated at Employee's and other California-based, hourly, non-exempt employees' overtime rates of pay but wasn't.

Based on these violations, Employee will seek civil penalties pursuant to the Private Attorney General Act ("PAGA"), Labor Code § 2698, et seq. on behalf of the Labor and Workforce Development Agency ("LWDA") against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to pay for all hours worked at either the applicable minimum wage and/or applicable overtime rate of pay, Employee will seek statutory penalties under Labor Code § 226(a)(1) because the failure to pay such wages rendered his and California-based non-exempt employees' pay calculations inaccurate in violation of Labor Code § 226(e)(2)(B)(i).

2. *Failure to Authorize or Permit Meal Periods in Violation of Labor Code Sections 512 and 226.7*

Employee maintains that Employers routinely required Employee and other California-based, hourly, non-exempt employees with non-compliant meal periods in violation of Labor Code § 226.7, Labor Code § 512 and Industrial Welfare Commission ("IWC") Wage Order 4-2001, 11.

In California, an employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. A second meal period of not less than 30 minutes is required if an employee works more than 10 hours per day. Lab. Code § 512. If the employer requires the employee to remain at the work site or facility during the meal period, the meal period must be paid. This is true even where the

employee is relieved of all work duties during the meal period. *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal.App.4th 968.

Specifically, Employee maintains that Employers did not authorize or permit Employee or other California-based, hourly, non-exempt employees to take legally compliant meal periods because Employers maintained a systematic company policy that pressured and/or required employees to work without receiving meal periods, or the meal breaks were interrupted, untimely, taken while working, and/or were shorter than 30 minutes. Nevertheless, Employers automatically deducted 30 minutes from Employees' and California-based, hourly, non-exempt employees' daily hours worked and attributed that time to a meal period. Additionally, Employee maintains that Employers failed to provide Employee and other California-based, hourly, non-exempt employees a "premium" wage (one hour of pay at the employee's regular rate of pay) for non-compliant meal periods.

Based on these violations, Employee will seek civil penalties under PAGA, Labor Code §2698, et seq., on behalf of the LWDA against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of Employers' failure to permit and/or authorize all required meal periods and failure to pay meal period premiums for missed meal periods, Employee will seek statutory penalties under Labor Code 226(a)(1) because the failure to pay such premium wages rendered his and California-based non-exempt employees' pay calculations inaccurate in violation of Labor Code § 226(e)(2)(B)(i).

3. *Failure to Authorize or Permit Rest Periods in Violation of Labor Code Section 226.7*

Employee maintains that during his employment, Employers failed to maintain compliant rest break policies in violation of Labor Code Section 226.7.

California law states that "[e]very employer shall authorize and permit all employees to take rest breaks, which insofar as practicable shall be in the middle of each work period. The authorized rest break time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. ... If an employer fails to provide an employee a rest break in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest break is not provided." Wage Order 4, subd. 12; see Lab. Code § 226.7. Furthermore, "[e]mployees are entitled to 10 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Lab. Code §226.7. Additionally, the rest period requirement "obligates employers to permit-and authorizes employees to take-off-duty rest periods." *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

Specifically, Employee maintains that Employers did not authorize or permit Employee or other California-based, hourly, non-exempt employees to take an uninterrupted 10-minute rest period for shifts from three and one-half to six hours in length, 20 minutes for shifts of more than

six hours up to 10 hours, or 30 minutes for shifts of more than 10 hours up to 14 hours because Employers' systematic company policy pressured and/or required employees to work without receiving rest periods, or the rest breaks were interrupted or were untimely. Additionally, Employers failed to provide Employee and other California-based, hourly, non-exempt employees a "premium" wage (one hour of pay at the employee's regular rate of pay) for these legally non-compliant rest breaks.

Based on these violations, Employee will seek civil penalties under PAGA, Labor Code § 2698, *et seq.*, on behalf of the LWDA, against Employers if authorized to file a representative action on behalf of the State of California. As a derivative claim of failing to pay rest break premiums, Employee will seek statutory penalties under Labor Code § 226(a)(1) because the failure to pay such premium wages rendered his and California-based non-exempt employees' pay calculations inaccurate in violation of Labor Code § 226(e)(2)(B)(i).

4. Failure to Provide Accurate Wage Statements

The aforementioned derivative violations of Labor Code § 226, namely Employers' failure to pay all wages at the applicable minimum wage and/or applicable overtime rate of pay and failure to pay meal period and/or rest break premium wages, rendered Employee's and other California-based, hourly, non-exempt employees' pay calculations inaccurate.

Based on these violations, Employee will seek civil penalties under Labor Code § 226.3 and PAGA, Labor Code § 2698, *et seq.*, on behalf of the LWDA, against Employers if authorized to file a representative action on behalf of the State of California.

5. Failure to Provide Timely Pay Final Wages

As a result of the aforementioned violations of the Labor Code, Employee was not paid his final wages in a timely manner as required by Labor Code § 203. Any unpaid wages at the applicable minimum wage and/or at the applicable overtime rate of pay, and meal period and/or rest break premium wages (all outlined further above), were not paid at the time of Employee's separation of employment. Employee is informed and believes that other employees who separated from Employers, whether voluntarily or involuntarily, were not paid all wages due in a timely manner, including any unpaid wages at the applicable minimum wage and/or at the applicable overtime rate of pay, and meal period and/or rest break premium wages, as required by Labor Code §§ 201, 202, and 203.

Accordingly, Employee will seek restitution pursuant to Labor Code § 558(a)(3) for himself and other California-based, hourly, non-exempt employees for each violation of Labor Code § 2698, *et seq.*, on behalf of the LWDA, and against Employers if authorized to file a representative action on behalf of the State of California

REQUEST FOR RELIEF AND REMEDIES

By this letter, Employee, on behalf of himself and all other aggrieved employees in the state of California, make the following claims and will seek to represent the LWDA in a civil action based on the following claims:

(1) Employers are subject to civil penalties under PAGA for failing to pay wages for all hours worked at the legal minimum wage as required by California Labor Code sections 1194 and 1197;

(2) Employers are subject to civil penalties under PAGA for failing to pay wages for all hours worked, including overtime hours worked, as required by Labor Code §§ 510, 1194, *et seq.*, and 1197, *et seq.*;

(3) Employers are subject to civil penalties under PAGA for failing to authorize and/or permit, legally compliant meal periods. Moreover, Employers failed to pay one hour of premium pay at the employee's regular rate of pay for each day an employee was not provided with all legally compliant meal periods in a violation of Labor Code Section §§ 226.7 and 512;

(4) Employers are subject to civil penalties under PAGA for failing to authorize and/or permit, legally compliant rest breaks. Moreover, Employers failed to pay one hour of premium pay at the employee's regular rate of pay for each day an employee was not provided with all legally compliant rest breaks as required by Labor Code § 226.7;

(5) Employers are subject to civil penalties under Labor Code § 226.3 and PAGA for derivative claims based on Employers' failure to pay any unpaid wages at the applicable minimum wage, any unpaid wages at the applicable overtime rate of pay, and meal period and/or rest break premium wages, thus rendering wage statements inaccurate in the amount of "net wages earned" and "gross wages earned" in violation of Labor Code § 226 and;

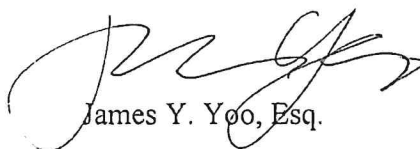
(6) Employers are subject to civil penalties under PAGA for willfully failing to timely pay wages to employees who were discharged or quit, including any unpaid wages at the applicable minimum wage, all unpaid wages at the applicable overtime rate of pay, and rest break premium wages, and further failing to pay a day's wages up to 30 days until final wages were paid, in violation of Labor Code §§ 201, 202, and 203.

Conclusion

Employee intends to file a PAGA Complaint in the appropriate California Court alleging the aforementioned violations. Employee, through his counsel, awaits notice from the LWDA as to whether it intends to pursue the matter, or whether Employers will elect to cure remedies.

Thank you for your assistance and cooperation in this matter. Please do not hesitate to contact me via phone at (310) 432-0000 or via e-mail at jyoo@lelawfirm.com if you have any questions.

Very truly yours,
LAVI & EBRAHIMIAN, LLP



James Y. Yoo, Esq.

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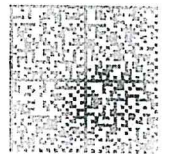
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c/o Alan G. Novodor, Registered Agent
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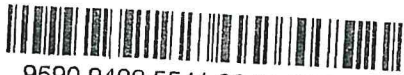
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Form 3811, July 2015 PSN 7530-02-000-9053

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Domestic Return Receipt

BRAHIMIAN, LLP
Olympic Blvd., Suite 200
Hills, CA 90211



7019 0700 0002 2123 0286

RITE-WAY MEAT PACKERS, INC.

c/o Alan G. Novodor

Agent for Service of Process

11835 W Olympic Blvd. Ste 1125E

Los Angeles, CA 90064

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STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 8889 W. Olympic Blvd., Suite 200, Beverly Hills, California 90211.

On July 6, 2020, I served the foregoing document, described as:

"PLAINTIFF ALFREDO TORRES' FIRST AMENDED COMPLAINT FOR DAMAGES AND RESTITUTION"

on all interested parties in this action as follows:

*Attorneys for Defendant for RITE-WAY MEAT
PACKERS, INC.:*

David VanPelt, Cal Bar No. 163690
Email: david.vanpelt@akerman.com
Akerman LLP
601 W 5th St, Ste 300
Los Angeles, CA 90071-3506

☒ (BY MAIL) As follows:

I placed such envelope, with postage thereon prepaid, in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collecting and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on that same day, with postage thereon fully prepaid, at Los Angeles, California, in the ordinary course of business. I am aware that, on motion of the party served, service is presumed invalid if the postal cancellation or postage meter date is more than one day after the date of deposit for mailing in this affidavit.

☒ (BY EMAIL) I sent courtesy copies of the documents listed above via email to counsel at the email addresses david.vanpelt@akerman.com.

☐ (BY PERSONAL SERVICE) I caused such envelope to be delivered by hand to the attorney at the offices of the addressee.

☒ (STATE) I declare, under penalty of perjury under the laws of the State of California, that the above is true and correct.

Executed on July 6, 2020, at Beverly Hills, California.


Yolanda Ramirez