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Attorneys for
ERIK MARTINEZ,
on behalf of himself, all others similarly situated,
and on behalf of the general public.

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JUN 04 2020
LaShonda Richardson

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF SAN BERNARDINO**

ERIK MARTINEZ on behalf of himself, all
others similarly situated, and on behalf of
the general public,

Plaintiffs,

v.

PATRICK INDUSTRIES, INC.; and DOES
1-100,

Defendants.

Case No.

CIV DS 2009663

**PLAINTIFF'S CLASS ACTION
COMPLAINT FOR DAMAGES,
INJUNCTIVE RELIEF, DECLARATORY
RELIEF, AND RESTITUTION**

- 1) Failure to Pay All Straight Time Wages;
- 2) Failure to Pay All Overtime Wages;
- 3) Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, IWC Wage Order No. 5-2001(11); Cal. Code Regs., tit. 8 § 11050);
- 4) Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5-2001(12); Cal. Code Regs. Title 8 § 11050);
- 5) Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions (Lab. Code §§ 226, 1174, 1175);
- 6) Violations of the Labor Code Private Attorneys General Act of 2004 ("PAGA"); and,
- 7) Violation of Unfair Competition Law (Bus. & Prof. Code § 17200, et seq.).

DEMAND FOR JURY TRIAL

1 Plaintiff ERIK MARTINEZ, on behalf of himself, all others similarly situated, and on behalf of
2 the general public, complains of Defendant PATRICK INDUSTRIES, INC. (“DEFENDANT” or
3 “PATRICK INDUSTRIES”) and/or DOES and for causes of action and alleges:

4 1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf
5 of Plaintiff ERIK MARTINEZ and all non-exempt warehouse workers and/or other
6 workers with similar job designations and titles who are presently or formerly employed
7 by PATRICK INDUSTRIES and/or DOES and/or their subsidiaries or affiliated companies
8 and/or predecessors within the State of California.

9 2. PATRICK INDUSTRIES is a major manufacturer and distributor of component and
10 building projects for the recreational vehicle, manufactured housing, and marine industries.
11 PATRICK INDUSTRIES also supplies many of its products to certain industrial markets
12 that include customers in the residential housing, high-rise, hospitality, kitchen cabinet,
13 office and household furniture, fixtures and commercial furnishings, and other industrial
14 markets.

15 3. PATRICK INDUSTRIES operates out of two warehouses in Fontana, California which is
16 located in San Bernardino County.

17 4. PATRICK INDUSTRIES employs non-exempt warehouse workers and/or other workers
18 with similar job designations or titles to provide services to its customers.

19 5. Throughout the time period that includes the four years prior to filing this action to the
20 present (the “Statutory Period”), PATRICK INDUSTRIES has maintained uniform
21 policies that violate the wage and hour rights of Plaintiff and similarly situated warehouse
22 workers and/or other workers with similar job designations or titles in the manner
23 complained of herein.

24 6. Throughout the statutory period PATRICK INDUSTRIES has not paid its warehouse
25 workers and/or other workers with similar job designations or titles for all time they were
26 performing work and/or are subject to PATRICK INDUSTRIES’ control. Failing to pay
27 for all hours worked while under PATRICK INDUSTRIES’ control and/or while suffered
28 or permitted to work has resulted in warehouse workers and/or other workers with similar

- 1 job designations or titles being deprived of straight time and/or overtime wages.
- 2 7. Throughout the Statutory Period, and through uniform policies applicable to all warehouse
3 workers and/or other workers with similar job designations or titles, PATRICK
4 INDUSTRIES failed to provide warehouse workers and/or other workers with similar job
5 designations or titles with meal periods that comply with California law and fail to
6 authorize and permit rest periods that comply with California law.
- 7 8. Throughout the Statutory Period and through uniform policies applicable to all warehouse
8 workers and/or other workers with similar job designations or titles, PATRICK
9 INDUSTRIES knowingly and intentionally provides wage statements to employees that
10 fail to specifically itemize everything required under California Labor Code section 226
11 (a).
- 12 9. Throughout the Statutory Period and through uniform policies applicable to all warehouse
13 workers and/or other workers with similar job designations or titles, PATRICK
14 INDUSTRIES knowingly and intentionally failed to pay all wages owed to warehouse
15 workers and/or other workers with similar job designations or titles in a timely manner at
16 the time warehouse workers and/or other workers with similar job designations or titles
17 terminated their employment – either voluntarily or involuntarily – with PATRICK
18 INDUSTRIES.
- 19 10. Plaintiff ERIK MARTINEZ, on behalf of himself and all of PATRICK INDUSTRIES’
20 and/or DOES’ non-exempt warehouse workers and/or other workers with similar job
21 designations or titles employed at any time during the Statutory Period brings this action
22 pursuant to California Labor Code Sections 218, 218.5, 222, 223, 224, 226, subd. (b),
23 226.3, 226.7. 510, 512, 515, 558, 1194, 1194.2, 1197, and California Code of Regulations,
24 Title 8, sections 11050 and 3395, seeking unpaid wages, overtime, meal and rest period
25 compensation, penalties, injunctive and other equitable relief, and reasonable attorneys’
26 fees and costs.
- 27 11. Plaintiff ERIK MARTINEZ, on behalf of himself and all of PATRICK INDUSTRIES’
28 and/or DOES’ non-exempt warehouse workers and/or other workers with similar job

1 designations or titles employed at any time during the Statutory Period, pursuant to
2 California Business and Professions Code sections 17200-17208, also seeks injunctive
3 relief, restitution, and disgorgement of all benefits PATRICK INDUSTRIES and/or DOES
4 enjoyed from their failure to pay all straight time wages, overtime wages, and meal and
5 rest period compensation.

6 **I. VENUE**

7 12. Venue as to each Defendant, PATRICK INDUSTRIES and/or DOES, is proper in this
8 judicial district, pursuant to California Code of Civil Procedure section 395. Defendant
9 PATRICK INDUSTRIES and/or DOES conduct business and commit California Labor
10 Code violations within San Bernardino County, and each Defendant and/or DOE is within
11 California for service of process purposes. The unlawful acts alleged herein have a direct
12 effect on Plaintiff and those similarly situated within the State of California and within San
13 Bernardino County. Defendant PATRICK INDUSTRIES and/or DOES employ numerous
14 warehouse workers and/or other workers with similar job designations or titles who
15 perform and/or performed work for PATRICK INDUSTRIES in San Bernardino County,
16 California during the Statutory Period.

17 **II. PARTIES**

18 **A. Plaintiffs.**

19 13. Throughout the Statutory Period, Plaintiff ERIK MARTINEZ is and was a resident of
20 California. During the Statutory Period, ERIK MARTINEZ was employed by Defendant
21 PATRICK INDUSTRIES and/or DOES in California and performed work in San
22 Bernardino County.

23 14. Plaintiff and the proposed class of similarly situated warehouse workers and/or other
24 workers with similar job designations or titles are covered by, inter alia, California IWC
25 Occupational Wage Order No. 5-2001, and Title 8, California Code of Regulations, §§
26 11050 and 3395.

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B. Defendants.

15. PATRICK INDUSTRIES is a major manufacturer and distributor of component and building projects for the recreational vehicle, manufactured housing, and marine industries. PATRICK INDUSTRIES also supplies many of its products to certain industrial markets that include customers in the residential housing, high-rise, hospitality, kitchen cabinet, office and household furniture, fixtures and commercial furnishings, and other industrial markets.

16. PATRICK INDUSTRIES has a strong foothold in the County of San Bernardino.

17. PATRICK INDUSTRIES employs warehouse workers and/or other workers with similar job designations or titles to work at its two warehouses located in the County of San Bernardino.

18. PATRICK INDUSTRIES employed Plaintiff and similarly situated non-exempt warehouse workers and/or other workers with similar job designations or titles in California.

19. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants DOES 1-100, inclusive, are presently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

20. Plaintiff is informed and believes, and based thereon alleges, that each Defendant and/or DOE acted in all respects pertinent to this action as the agent of the other Defendants and/or DOES, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendants and/or DOES are legally attributable to the other Defendants and/or DOES.

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three (3) hour and one-half hours, but less than or equal to six (6) hours.

All Class Members who worked one (1) or more shifts in excess of six (6) hours, but less than or equal to ten (10) hours.

All Class Members who worked one (1) or more shifts in excess of ten (10) hours.

All Class Members who worked one (1) or more shifts in which they received a wage statement for the corresponding pay period.

All Class Members who were not paid wages for meal periods.

All Class Members who were not paid for all time during which they were subject to the control of Defendant and/or suffered or permitted to work for Defendant during the relevant period of the statute of limitations.

All Class Members who had wages unlawfully deducted.

All Class Members who had to call in for a shift but were not scheduled to perform any installations.

All Class Members who were on standby to perform same day installations.

22. Plaintiff reserves the right under rule 1855, subdivision (b), California Rules of Court, to

1 amend or modify the Class description with greater specificity or further division into
2 subclasses or limitation to particular issues.

3 23. This action has been brought and may properly be maintained as a class action under the
4 provisions of section 382 of the California Code of Civil Procedure because there is a well-
5 defined community of interest in the litigation and the proposed Class is easily
6 ascertainable.

7 **A. Numerosity.**

8 24. The potential members of the Class as defined are so numerous that joinder of all the
9 members of the Class is impracticable. While the precise number of Class Members has
10 not been determined at this time, Plaintiff is informed and believes that PATRICK
11 INDUSTRIES and/or DOES currently employ, and during the liability period employed,
12 over fifty (50) Class Members in San Bernardino County and dispersed throughout
13 California during the liability period and who are or have been affected by PATRICK
14 INDUSTRIES' and/or DOES' policies of wage theft, failure to pay all straight and
15 overtime wages owed, failure to provide meal and/or rest periods without the appropriate
16 legal compensation, willful failure to pay all wages due at time of separation from
17 employment, and knowing and intentional failure to provide accurate and itemized
18 employee wage statements.

19 25. Accounting for employee turnover during the relevant periods increases this number
20 substantially. Upon information and belief, Plaintiff alleges PATRICK INDUSTRIES'
21 and/or DOES' employment records will provide information as to the number and location
22 of all Class Members. Joinder of all members of the proposed Class is not practicable.

23 **B. Commonality.**

24 26. There are questions of law and fact common to the Class that predominate over any
25 questions affecting only individual Class Members. These common questions of law and
26 fact include, without limitation:

- 27 (1) Whether PATRICK INDUSTRIES and/or DOES violated
28 the Labor Code and/or applicable IWC Wage Orders in failing to pay its

1 non-exempt employees all earned wages at the regular rate for all hours
2 worked.

3 (2) Whether PATRICK INDUSTRIES' and/or DOES' uniform
4 policies and/or practices whereby non-exempt employees were pressured
5 and/or incentivized to forego taking meal and/or rest periods.

6 (3) Whether PATRICK INDUSTRIES and/or DOES violated
7 Labor Code section 226.7, IWC Wage Order No. 5-2001 or other applicable
8 IWC Wage Orders, and/or California Code of Regulations, Title 8, section
9 11050, by failing to authorize, permit, and/or provide rest periods to its non-
10 exempt employees for every four (4) hours or major fraction thereof worked
11 and/or failing to pay said employees one (1) hour of pay at the employee's
12 regular rate of compensation for each work day that the rest period was not
13 authorized, permitted and/or provided.

14 (4) Whether PATRICK INDUSTRIES and/or DOES willfully
15 failed to pay, in a timely manner, wages owed to members of the proposed
16 Class who left PATRICK INDUSTRIES' and/or DOES' employ or who
17 were terminated.

18 (5) Whether PATRICK INDUSTRIES and/or DOES had
19 uniform policies and/or practices of failing to provide employees accurate
20 and itemized wage statements.

21 (6) Whether PATRICK INDUSTRIES and/or DOES had
22 uniform policies and/or practices of failing to timely pay all wages owed to
23 employees who left PATRICK INDUSTRIES' and/or DOES' employ or
24 who were terminated.

25 27. The answer to each of these respective questions will generate a common answer capable
26 of resolving class-wide liability in one stroke.

27 28. Said common questions predominate over any individualized issues and/or questions
28 affecting only individual members.

1 **C. Typicality.**

2 29. The claims of the named Plaintiff are typical of the claims of the proposed Class. Plaintiff
3 and all members of the proposed Class sustained injuries and damages arising out of and
4 caused by PATRICK INDUSTRIES' and/or DOES' common course of conduct in
5 violation of laws and regulations that have the force and effect of law and statutes as
6 alleged.

7 30. Plaintiff ERIK MARTINEZ was subjected to the same uniform policies and/or practices
8 complained of herein that affected all such employees. Thus, as ERIK MARTINEZ was
9 subjected to the same unlawful policies and practices as all non-exempt employees, his
10 claims are typical of the class he seeks to represent.

11 **D. Adequacy of Representation.**

12 31. Plaintiff will fairly and adequately represent and protect the interests of the members of the
13 Class.

14 32. Plaintiff is ready and willing to take the time necessary to help litigate this case.

15 33. Plaintiff has no conflicts that will disallow him to fairly and adequately represent and
16 protect the interests of the members of the Class.

17 34. Counsel who represent Plaintiff are competent and experienced in litigating large
18 employment class actions.

19 35. Specifically, David Mara, Esq. and Jill Vecchi, Esq. are California lawyers in good
20 standing.

21 36. Counsel who represent Plaintiff are competent and experienced in litigating large
22 employment class actions.

23 37. The lawyers at Mara Law Firm have been named class counsel in numerous cases and Mr.
24 Mara's and Ms. Vecchi's practice is primarily focused on representing classes, large and
25 small, on the basis of California Labor Code and IWC Wage Order Violations similar to
26 those alleged herein. The attorneys at the firm are also frequently called upon to and do
27 author amicus briefs on behalf of the Consumer Attorneys of California on cases in the
28 appellate courts and Supreme Court of California involving important issues relating to

those alleged herein.

38. Mara Law Firm, PC has the resources to take this case to trial and judgment, if necessary.

39. Mr. Mara has the experience, ability, and ways and means to vigorously prosecute this case.

E. Superiority of Class Action.

40. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of PATRICK INDUSTRIES' and/or DOES' illegal policies and/or practices of failing to pay all straight time and overtime wages owed, failing to permit or authorize rest periods, failing to provide meal periods, knowingly and intentionally failing to comply with wage statement requirements, and failing to pay all wages due at termination.

41. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

42. Because such common questions predominate over any individualized issues and/or questions affecting only individual members, class resolution is superior to other methods for fair and efficient adjudication.

IV. CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES: Failure to Pay All Straight Time Wages

43. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

44. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those similarly situated for all hours worked.

- 1 45. It is fundamental that an employer must pay its employees for all time worked. California
2 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
3 California Labor Code section 222 prohibits the withholding of part of a wage. California
4 Labor Code section 223 prohibits the payment of less than a statutory or contractual wage
5 scale. California Labor Code section 1197 prohibits the payment of less than the minimum
6 wage. California Labor Code section 1194 states that an employee receiving less than the
7 legal minimum wage is entitled to recover in a civil action the unpaid balance of the full
8 amount of this minimum wage. California Labor Code section 1194.2 states that an
9 employee receiving less than the legal minimum wage is entitled to recover liquidated
10 damages in an amount equal to the wages unlawfully unpaid and interest thereon.
11 California Labor Code section 224 only permits deductions from wages when the employer
12 is required or empowered to do so by state or federal law or when the deduction is expressly
13 authorized in writing by the employee for specified purposes that do not have the effect of
14 reducing the agreed upon wage.
- 15 46. IWC Wage Order 5-2001(5) requires employers to pay “reporting time pay.” Each workday
16 an employee is required to report to work, but is not put to work or is furnished with less
17 than half of his or her usually or scheduled day’s work, must be paid for half of the usual
18 or scheduled day’s work, but in no event less than two hours nor more than four hours, at
19 his or her regular rate of pay. If an employee is required to report to work a second time in
20 any one workday and is furnished less than two hours of work on the second reporting, he
21 or she must be paid for two hours at his or her regular rate of pay.
- 22 47. Plaintiff and those similarly situated Class Members were employed by PATRICK
23 INDUSTRIES and/or DOES at all relevant times. PATRICK INDUSTRIES and/or DOES
24 were required to compensate Plaintiff for all hours worked and were prohibited from
25 making deductions that had the effect of reducing the agreed upon wage.
- 26 48. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those
27 similarly situated for all hours worked. For example, PATRICK INDUSTRIES fails to pay
28 Class Members for the following hours worked: rounding, before shifts start, after shifts

1 end, and/or any other time in the day when the employees were performing work tasks,
2 subject to the control of PATRICK INDUSTRIES and/or suffered or permitted to work
3 during periods of time for which PATRICK INDUSTRIES is not paying them. Failing to
4 pay for all hours worked while under PATRICK INDUSTRIES' control and/or while
5 suffered or permitted to work has resulted in Plaintiff and Class Members being deprived
6 of straight time wages throughout the Statutory Period.

7 49. Failing to pay for all hours worked while under PATRICK INDUSTRIES' control and/or
8 while suffered or permitted to work has resulted in Class Members being deprived of
9 straight time and/or overtime wages throughout the Statutory Period.

10 50. Defendant and/or DOES have a continuous and consistent policy of failing to pay full
11 wages to Plaintiff and the Class Members by deducting a portion of the wages earned by
12 Plaintiff and the Class Members when they worked through their meal periods, are not
13 relieved of all work duties during their meal periods, and/or when PATRICK
14 INDUSTRIES recorded a meal period for Plaintiff and the Class Members when no meal
15 period was taken. Specifically, Plaintiff and the Class Members worked through their meal
16 periods to satisfy their demanding work duties imposed by PATRICK INDUSTRIES,
17 thereby denying them the right to be completely free from employer control under
18 California law.

19 51. Defendant and/or DOES have a continuous and consistent policy of clocking-out Plaintiff
20 and those similarly situated for a thirty (30) minute meal period and/or otherwise recording
21 a meal period, even though Plaintiff and all members of the Class work through their meal
22 periods. Thus, PATRICK INDUSTRIES and/or DOES do not pay Plaintiff and each and
23 every member of the Class for all time worked each and every day they work without a
24 meal period and have time deducted.

25 52. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
26 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
27 Class Members have suffered, and continue to suffer, substantial unpaid wages, and lost
28 interest on such wages, and expenses and attorneys' fees in seeking to compel PATRICK

1 INDUSTRIES and/or DOES to fully perform their obligations under state law, all to their
2 respective damage in amounts, according to proof at trial.

3 53. As a direct result of PATRICK INDUSTRIES' and/or DOES' policy of illegal wage theft,
4 Plaintiff and those similarly situated have been damaged in an amount to be proven at trial.

5 54. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
6 below.

7 **SECOND CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES:**

8 **Failure to Pay All Overtime Wages**

9 55. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
10 and every other paragraph in this Complaint herein as if fully plead.

11 56. It is fundamental that an employer must pay its employees for all time worked. California
12 Labor Code sections 218 and 218.5 provides a right of action for nonpayment of wages.
13 California Labor Code section 222 prohibits the withholding of part of a wage. California
14 Labor Code section 223 prohibits the payment of less than a statutory or contractual wage
15 scale. California Labor Code section 1197 prohibits the payment of less than the minimum
16 wage. California Labor Code section 224 only permits deductions from wages when the
17 employer is required or empowered to do so by state or federal law or when the deduction
18 is expressly authorized in writing by the employee for specified purposes that do not have
19 the effect of reducing the agreed upon wage.

20 57. PATRICK INDUSTRIES and/or DOES failed to pay overtime when employees worked
21 over eight (8) hours per day and when employees worked over forty (40) hours per week.

22 58. Plaintiff and those similarly situated Class Members were employed by PATRICK
23 INDUSTRIES and/or DOES at all relevant times. PATRICK INDUSTRIES and/or DOES
24 were required to compensate Plaintiff for all overtime hours worked and were prohibited
25 from making deductions that had the effect of reducing the agreed upon wage.

26 59. PATRICK INDUSTRIES and/or DOES failed to pay for the overtime that was due,
27 pursuant to IWC Wage Order No. 5-2001, item 3(A).

28 60. Defendant and/or DOES have had a continuous policy of not paying Plaintiff and those

1 similarly situated for all hours worked. For example, PATRICK INDUSTRIES fails to pay
2 Class Members for the following hours worked: rounding, before shifts start, after shifts
3 end, and/or any other time in the day when the employees were performing work tasks,
4 subject to the control of PATRICK INDUSTRIES and/or suffered or permitted to work
5 during periods of time for which PATRICK INDUSTRIES is not paying them. Failing to
6 pay for all hours worked while under PATRICK INDUSTRIES' control and/or while
7 suffered or permitted to work has resulted in Plaintiff and Class Members being deprived
8 of straight time wages throughout the Statutory Period. Failing to pay for all hours worked
9 while under PATRICK INDUSTRIES' control and/or while suffered or permitted to work
10 has resulted in Plaintiff and Class Members being deprived of overtime wages throughout
11 the Statutory Period.

12 61. Defendant and/or DOES have had a continuous policy of altering, changing, and/or failing
13 to record all of Plaintiff's and the Class Members' time worked to eliminate and/or reduce
14 the number of overtime hours worked and/or to only pay employees their regular rate of
15 pay for these hours.

16 62. Plaintiff and the Class Members are informed and believe and thereon allege that as a direct
17 result of Defendant's and/or DOES' uniform policies and/or practices, Plaintiff and the
18 Class Members have suffered, and continue to suffer, substantial unpaid overtime wages,
19 and lost interest on such overtime wages, and expenses and attorneys' fees in seeking to
20 compel PATRICK INDUSTRIES and/or DOES to fully perform their obligations under
21 state law, all to their respective damage in amounts according to proof at time of trial.
22 PATRICK INDUSTRIES and/or DOES committed the acts alleged herein knowingly and
23 willfully, with the wrongful and deliberate intention on injuring Plaintiff and the Class
24 Members. PATRICK INDUSTRIES and/or DOES acted with malice or in conscious
25 disregard of Plaintiff's and the Class Member's rights. In addition to compensation,
26 Plaintiff is also entitled to any penalties allowed by law.

27 63. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
28 below.

THIRD CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES:

Failure to Provide Meal Periods, or Compensation in Lieu Thereof (Lab. Code §§ 226.7, 512,

IWC Wage Order No. 5-2001(11); Cal. Code Regs., tit. 8, § 11050)

64. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

65. Under California Labor Code section 512 and IWC Wage Order No. 5, no employer shall employ any person for a work period of more than five (5) hours without providing a meal period of not less than thirty (30) minutes. During these meal periods of not less than thirty (30) minutes, the employee is to be completely free of the employer's control and must not perform any work for the employer. If the employee does perform work for the employer during the thirty (30) minute meal period, the employee has not been provided a meal period in accordance with the law. Also, the employee is to be compensated for any work performed during the thirty (30) minute meal period.

66. In addition, an employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with another meal period of less than thirty (30) minutes.

67. Under California Labor Code section 226.7, if the employer does not provide an employee a meal period in accordance with the above requirements, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

68. PATRICK INDUSTRIES and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and Class Members who worked for work periods of more than five (5) consecutive hours. As such, Plaintiff and Class Members were required to work over five (5) consecutive hours at a time without being provided a thirty (30) minute uninterrupted meal period within that time.

69. PATRICK INDUSTRIES and/or DOES failed to provide thirty (30) minute, uninterrupted meal periods to Plaintiff and Class Members for every five (5) continuous hours worked.

70. PATRICK INDUSTRIES' and/or DOES' business model is such that Class Members were

1 assigned too much work and insufficient help due to chronic understaffing to be able to
2 take meal periods. Thus, Class Members are not able to take meal periods.

3 71. Throughout the statutory period, PATRICK INDUSTRIES and/or DOES had a pattern and
4 practice of assigning too much work to be completed in too short of time frames, resulting
5 in Plaintiff and those similarly situated not being able to take meal periods.

6 72. PATRICK INDUSTRIES and/or DOES would not permit Plaintiff and the Class to take
7 30-minute meal periods unless specifically scheduled by PATRICK INDUSTRIES and/or
8 DOES or unless Plaintiff and the Class were expressly told to by PATRICK INDUSTRIES
9 and/or DOES. This routinely resulted in Plaintiff and the Class Members not being able to
10 take a meal period, if at all, until after the fifth hour.

11 73. PATRICK INDUSTRIES' and/or DOES' business model was such that Plaintiff and Class
12 Members were assigned too much work that could not reasonably be completed in their
13 assigned shift, work, and/or route, resulting in Plaintiff and the Class Members routinely
14 and regularly being forced to eat their meals while working.

15 74. Throughout the statutory period, PATRICK INDUSTRIES and/or DOES valued
16 productivity over providing meal periods and, because of this, meal breaks were not
17 priorities to PATRICK INDUSTRIES and/or DOES.

18 75. Because of PATRICK INDUSTRIES and/or DOES demanding policies on completion
19 times, Plaintiff and those similarly situated felt that stopping work to exercise their rights
20 to take meal periods would sacrifice their jobs with PATRICK INDUSTRIES and/or
21 DOES.

22 76. PATRICK INDUSTRIES and/or DOES did not have a policy of providing a second meal
23 period before the end of the tenth hour.

24 77. Failing to provide compensation for such unprovided or improperly provided meal periods,
25 as alleged above, PATRICK INDUSTRIES and/or DOES willfully violated the provisions
26 of California Labor Code sections 226.7, 512, and IWC Wage Order No. 5.

27 78. As a result of the unlawful acts of PATRICK INDUSTRIES and/or DOES, Plaintiff and
28 the Class he seeks to represent have been deprived of premium wages, in amounts to be

1 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
2 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage
3 Order No. 5-2001. Plaintiff and the Class he seeks to represent did not willfully waive their
4 right to take meal periods through mutual consent with PATRICK INDUSTRIES and/or
5 DOES.

6 79. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
7 below.

8 **FOURTH CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES:**

9 **Failure to Authorize and Permit Rest Periods (Lab. Code § 226.7; IWC Wage Order No. 5-**
10 **2001(12); Cal. Code Regs. Title 8 § 11050)**

11 80. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
12 and every other paragraph in this Complaint herein, as if fully plead.

13 81. Under IWC Wage Order No. 5, every employer shall authorize and permit all employees
14 to take rest periods, "[t]he authorized rest period time shall be based on the total hours
15 worked daily at the rate of ten (10) minutes net rest time per four (4) hours worked or major
16 fraction thereof." IWC Wage Order 5-2001(12). The time spent on rest periods "shall be
17 counted as hours worked for which there shall be no deduction from wages." *Id.*

18 82. Under California Labor Code section 226.7, if the employer does not provide an employee
19 a rest period in accordance with the above requirements, the employer shall pay the
20 employee one (1) hour of pay at the employee's regular rate of compensation for each
21 workday that the rest break is not provided.

22 83. At all relevant times, Defendant and/or DOES failed to authorize and/or permit rest period
23 time based upon the total hours worked daily at the rate of ten (10) minutes net rest time
24 per four (4) hours or major fraction thereof.

25 84. In the alternative, PATRICK INDUSTRIES' and/or DOES' business model was such that
26 Class Members were assigned too much work that could not be reasonably completed
27 within their assigned shift, resulting in Class Members routinely and regularly being forced
28 to work through their rest periods.

1 85. Throughout the statutory period, PATRICK INDUSTRIES and/or DOES had a pattern and
2 practice of assigning too much work to be completed in too short of time frames, resulting
3 in Plaintiff and those similarly situated not to take rest periods.

4 86. Because of PATRICK INDUSTRIES' and/or DOES' demanding policies on task
5 completion times, Plaintiff and those similarly situated felt that exercising their rights to
6 take rest breaks would sacrifice their jobs with PATRICK INDUSTRIES and/or DOES.

7 87. Throughout the statutory period, PATRICK INDUSTRIES' and/or DOES' uniform
8 policies and practices resulted in Class Members not receiving rest breaks.

9 88. Throughout the statutory period, PATRICK INDUSTRIES and/or DOES valued
10 productivity over providing rest periods and, because of this, rest periods were not priorities
11 to PATRICK INDUSTRIES and/or DOES.

12 89. Throughout the statutory period, PATRICK INDUSTRIES' and/or DOES' policies
13 promoting productivity subjugated Plaintiff's and those similarly situated's rights to rest
14 periods.

15 90. As a result of the unlawful acts of PATRICK INDUSTRIES and/or DOES, Plaintiff and
16 the Class he seeks to represent have been deprived of premium wages, in amounts to be
17 determined at trial, and are entitled to recovery of such amounts, plus interest and penalties
18 thereon, attorneys' fees and costs, pursuant to Labor Code section 226.7, and IWC Wage
19 Order No. 5-2001.

20 91. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
21 below.

22 **FIFTH CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES:**

23 **Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement**
24 **Provisions (Lab. Code §§ 226, 1174, 1175; IWC Wage Order No. 4; Cal. Code Regs., Title 8,**
25 **§ 11050)**

26 92. Plaintiff and those similarly situated Class Members hereby incorporate by reference each
27 and every other paragraph in this Complaint herein as if fully plead.

28 93. California Labor Code section 226 subdivision (a) requires Defendant and/or DOES to,

1 inter alia, itemize in wage statements and accurately report the total hours worked and total
2 wages earned. PATRICK INDUSTRIES and/or DOES have knowingly and intentionally
3 failed to comply with California Labor Code section 226, subdivision (a), on each and
4 every wage statement provided to Plaintiff ERIK MARTINEZ and members of the
5 proposed Class.

6 94. California Labor Code section 1174 requires PATRICK INDUSTRIES and/or DOES to
7 maintain and preserve, in a centralized location, records showing the daily hours worked
8 by and the wages paid to its employees. PATRICK INDUSTRIES and/or DOES have
9 knowingly and intentionally failed to comply with California Labor Code section 1174.
10 The failure of PATRICK INDUSTRIES and/or DOES, and each of them, to comply with
11 California Labor Code section 1174 is unlawful pursuant to California Labor Code section
12 1175.

13 95. PATRICK INDUSTRIES and/or DOES failed to maintain accurate time records - as
14 required by IWC Wage Order No. 5-2001(7), and Cal. Code Regs., Title 8 section 11050 -
15 showing, among other things, when the employee begins and ends each work period, the
16 total daily hours worked in itemized wage statements, total wages, bonuses and/or
17 incentives earned, and all deductions made.

18 96. PATRICK INDUSTRIES and/or DOES have knowingly and intentionally failed to provide
19 Plaintiff and the Class Members with accurate itemized wage statements which show: “(1)
20 gross wages earned, (2) total hours worked by the employee, . . . (4) all deductions,
21 provided that all deductions made on written orders of the employee may be aggregated
22 and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which
23 the employee is paid, (7) the name of the employee and only the last four digits of his or
24 her social security number or an employee identification number other than a social
25 security number, (8) the name and address of the legal entity that is the employer and, if
26 the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the
27 name and address of the legal entity that secured the services of the employer, and (9) all
28 applicable hourly rates in effect during the pay period and the corresponding number of

- 1 hours worked at each hourly rate by the employee[.]” California Labor Code section
2 226(a).
- 3 97. PATRICK INDUSTRIES and/or DOES knowingly and intentionally did not include the
4 gross wages earned on wage statements. PATRICK INDUSTRIES therefore knowingly
5 and intentionally failed to itemize the gross wages earned on Plaintiff’s and the Class
6 Members’ wage statements.
- 7 98. In every pay period during the period of the relevant statute of limitations, PATRICK
8 INDUSTRIES and/or DOES knowingly and intentionally did not itemize the total hours
9 worked on wage statements as California Labor Code section 226, subsection (a), requires.
10 In every pay period during the period of the relevant statute of limitations, PATRICK
11 INDUSTRIES and/or DOES knowingly and intentionally did not include the total hours
12 worked on wage statements. PATRICK INDUSTRIES and/or DOES therefore knowingly
13 and intentionally failed to itemize the total hours worked on Plaintiff’s and the Class
14 Members’ wage statements.
- 15 99. PATRICK INDUSTRIES and/or DOES have a continuous policy of not paying Plaintiff
16 and the Class Members for all hours worked. PATRICK INDUSTRIES and/or DOES have
17 not paid for all the time Plaintiff and the Class Members worked throughout the day,
18 including, but not limited to rounding, before shifts start, after shifts end, and/or any other
19 time in the day when the employees were performing work tasks, subject to the control of
20 PATRICK INDUSTRIES and/or DOES and/or otherwise had work duties. Further,
21 PATRICK INDUSTRIES and/or DOES would require Plaintiff and the Class Members to
22 conduct work before clocking in, including but not limited to, loading equipment into a
23 work truck. In addition, PATRICK INDUSTRIES and/or DOES does not pay Plaintiff and
24 the Class Members if they work longer than their scheduled shift length.
- 25 100. Additionally, PATRICK INDUSTRIES and/or DOES have had a continuous policy of not
26 paying Plaintiff and the Class Members for all hours worked in that PATRICK
27 INDUSTRIES and/or DOES continuously and consistently clocked Plaintiff and the Class
28 Members out for a thirty (30) minute meal period and/or otherwise recorded a meal period,

1 even though Plaintiff and the Class Members work through their meal periods and/or were
2 unable to take meal periods. Thus, PATRICK INDUSTRIES and/or DOES shave/steal
3 earned wages from Plaintiff and the Class Members every day they work without a meal
4 period and have time deducted.

5 101. In every pay period during the period of the relevant statute of limitations, PATRICK
6 INDUSTRIES and/or DOES knowingly and intentionally did not include the net wages
7 earned on wage statements.

8 102. As a result of the knowing and intentional failure by PATRICK INDUSTRIES and/or
9 DOES to comply with itemized employee wage statement provisions, Plaintiff and the
10 Class Members have been able to reconstruct only a reasonable estimate of the hours
11 worked and have, therefore, not received full compensation.

12 103. PATRICK INDUSTRIES and/or DOES knowingly and intentionally did not include
13 Plaintiff's and the Class Members' last four digits of his or her social security number or
14 an employee identification number other than the social security number.

15 104. Under California Labor Code section 226.3, "[a]ny employer who violates subdivision (a)
16 of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
17 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000)
18 per employee for each violation in a subsequent citation, for which the employer fails to
19 provide the employee a wage deduction statement or fails to keep the records required in
20 subdivision (a) of Section 226." The penalties provided for in California Labor Code
21 section 226.3 are in addition to other penalties provided by law.

22 105. As a direct result of PATRICK INDUSTRIES and/or DOES unlawful acts, Plaintiff and
23 the Class he intends to represent have been damaged and are entitled to recovery of such
24 amounts, plus interest thereon, attorneys' fees, and costs, pursuant to California Labor
25 Code section 226.

26 106. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
27 below.

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SIXTH CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES:

Violations of the Private Attorneys General Act of 2004 (“PAGA”) (Labor Code §2698 et seq.).

107. Plaintiff and those similarly situated Class members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

108. Plaintiff, by virtue of his employment with PATRICK INDUSTRIES, and PATRICK INDUSTRIES’ failure to provide meal and rest periods, overtime compensation, all wages for all work performed at the statutory minimum agreed upon rate, accurate itemized wage statements, and all wages due at termination – for the reasons stated herein above – are aggrieved employees with standing to bring an action under the Private Attorney General Act (“PAGA”). Plaintiff, as representative of the people of the State of California, will seek any and all penalties otherwise capable of being collected by the Labor Commission and/or the Department of Labor Standards Enforcement (“DLSE”). This includes each of the following, as set forth in Labor Code Section 2699.5, which provides that Section 2699.3(a) applies to any alleged violation of the following provisions: Sections 201 through 203, 204, 205.5, 221, 222, 223, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, and 1199.

109. On February 19, 2020, pursuant to California Labor Code section 2699.3, Plaintiff provided notice to the Labor and Workforce Development Agency (“LWDA”). This notice outlined the California Labor Code violations Plaintiff alleges against PATRICK INDUSTRIES and/or DOES. The violations alleged in this notice also form the basis for the allegations herein.

110. Plaintiff brings this action against PATRICK INDUSTRIES on behalf of himself and all other similarly situated aggrieved employees who work and/or worked as non-exempt, hourly all non-exempt warehouse workers and/or other workers with similar job designations and titles.

111. Plaintiff is informed and believes that PATRICK INDUSTRIES has violated and continues to violate provisions of the California Labor Code and applicable Wage Orders related to

meal and rest periods, overtime compensation, wages for all work performed, itemized wage statements, and all wages due at termination.

112. Plaintiff, as personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one-year period of filing this action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with PAGA, with at least 75% of the penalties recovered being provided to the State of California and the LWDA.

SEVENTH CAUSE OF ACTION AGAINST PATRICK INDUSTRIES AND/OR DOES:

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

113. Plaintiff and those similarly situated Class Members hereby incorporate by reference each and every other paragraph in this Complaint herein as if fully plead.

114. PATRICK INDUSTRIES and/or DOES failure to pay all straight time and overtime wages earned, failure to provide compliant meal and/or rest breaks and/or compensation in lieu thereof, failure to itemize and keep accurate records, failure to pay all wages due at time of termination, as alleged herein, constitutes unlawful activity prohibited by California Business and Professions Code section 17200, et seq.

115. The actions of PATRICK INDUSTRIES and/or DOES in failing to pay Plaintiff and members of the proposed Class in a lawful manner, as alleged herein, constitutes false, unfair, fraudulent and deceptive business practices, within the meaning of California Business and Professions Code section 17200, et seq.

116. Plaintiff is entitled to an injunction and other equitable relief against such unlawful practices in order to prevent future damage, for which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. Plaintiff brings this cause individually and as members of the general public actually harmed and as a representative of all others subject to PATRICK INDUSTRIES and/or DOES unlawful acts and practices.

117. As a result of their unlawful acts, PATRICK INDUSTRIES and/or DOES have reaped and continue to reap unfair benefits at the expense of Plaintiff and the proposed Class he seeks

1 to represent. PATRICK INDUSTRIES and/or DOES should be enjoined from this activity
2 and made to disgorge these ill-gotten gains and restore Plaintiff and the members of the
3 proposed Class pursuant to Business and Professions Code section 17203. Plaintiff is
4 informed and believes, and thereon alleges, that Defendants and/or DOES are unjustly
5 enriched through their policy of not all wages owed to Plaintiff and members of the
6 proposed Class.

7 118. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and members of the
8 proposed class are prejudiced PATRICK INDUSTRIES and/or DOES unfair trade
9 practices.

10 119. As a direct and proximate result of the unfair business practices of PATRICK
11 INDUSTRIES and/or DOES, and each of them, Plaintiff, individually and on behalf of all
12 employees similarly situated, are entitled to equitable and injunctive relief, including full
13 restitution and/or disgorgement of all wages and premium pay which have been unlawfully
14 withheld from Plaintiff and members of the proposed Class as a result of the business acts
15 and practices described herein and enjoining PATRICK INDUSTRIES and/or DOES from
16 engaging in the practices described herein.

17 120. The illegal conduct alleged herein is continuing, and there is no indication that PATRICK
18 INDUSTRIES and/or DOES will cease and desist from such activity in the future. Plaintiff
19 alleges that if PATRICK INDUSTRIES and/or DOES are not enjoined from the conduct
20 set forth in this Complaint, they will continue the unlawful activity discussed herein.

21 121. Plaintiff further requests that the Court issue a preliminary and permanent injunction
22 prohibiting PATRICK INDUSTRIES and/or DOES from continuing to not pay Plaintiff
23 and the members of the proposed Class overtime wages as discussed herein.

24 122. WHEREFORE, Plaintiff and the Class he seeks to represent request relief as described
25 below.

26 **V. PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiff prays for judgment as follows:

28 A. That the Court determine that this action may be maintained as a class action;

- 1 B. For compensatory damages, in an amount according to proof at trial, with interest
2 thereon;
- 3 C. For economic and/or special damages in an amount according to proof with interest
4 thereon;
- 5 D. For unpaid straight time and overtime wages, in an amount according to proof at trial,
6 with interest thereon;
- 7 E. For compensation for all time worked;
- 8 F. For compensation for not being provided paid rest breaks;
- 9 G. For compensation for not being provided paid meal periods;
- 10 H. For damages and/or monies owed for failure to comply with itemized employee wage
11 statement provisions;
- 12 I. That Defendant be found to have engaged in unfair competition in violation of sections
13 17200 et seq. of the California Business and Professions Code;
- 14 J. That Defendant be ordered and enjoined to make restitution to the Class due to their
15 unfair competition, including disgorgement of their wrongfully withheld wages
16 pursuant to California Business and Professions Code sections 17203 and 17204;
- 17 K. That an order of specific performance of all penalties owed be issued under Business
18 and Professions Code sections 17202;
- 19 L. That Defendant be enjoined from continuing the illegal course of conduct, alleged
20 herein;
- 21 M. That Defendant further be enjoined to cease and desist from unfair competition in
22 violation of section 17200 et seq. of the California Business and Professions Code;
- 23 N. That Defendant be enjoined from further acts of restraint of trade or unfair competition;
- 24 O. For attorneys' fees;
- 25 P. For Liquidated Damages;
- 26 Q. For interest accrued to date;
- 27 R. For costs of suit and expenses incurred herein; and
- 28 S. For any such other and further relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

Plaintiff demands a jury trial.

Dated: 6/1/2020

MARA LAW FIRM, PC



David Mara, Esq.

Jill Vecchi, Esq.

Attorneys for Plaintiff ERIK MARTINEZ on behalf
of himself, all others similarly situated, and on behalf
of the general public.