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Individually, and on behalf of all other similarly situated
Current and former employees of Defendants

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF KINGS

JOSE LUIS GONZALEZ, individually, and
on behalf of all other similarly situated
current and former employees of Defendants

Plaintiff,

vs.

LACEY MILLING COMPANY, a
California Corporation; and DOES 1 through
50, inclusive,

Defendants.

CASE NO.: 19C-0361

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT FOR DAMAGES:**

1. Failure to Provide Meal Periods
2. Failure to pay minimum and straight time wages;
3. Failure to pay overtime compensation;
4. Failure to timely pay wages upon termination of employment;
5. Failure to provide accurate statements and maintain required records;
6. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.];
7. Failure to Permit or Authorize Rest Periods; and
8. Civil Penalties under the Private Attorneys General Act.

DEMAND FOR JURY TRIAL

1 Plaintiff Jose Luis Gonzalez (“Plaintiff”), on behalf of himself and all other similarly
2 situated current and former employees of Lacey Milling Company complains and alleges as
3 follows:

4 INTRODUCTION & GENERAL ALLEGATIONS

5 1. Plaintiff brings this action against Lacey Milling Company and DOES 1 through
6 50 (hereinafter also collectively referred to as “DEFENDANTS”) for California Labor Code
7 violations stemming from DEFENDANTS’ failure to provide all timely meal periods, failure
8 to pay for all hours worked, including minimum wage, straight time, and overtime pay, failure
9 to timely pay all wages to terminated employees, and failure to furnish accurate statements and
10 maintain required records, in accordance with California Labor Code §§ 201-204, 226, 226.7,
11 510, 512, 516, 1174, 1174.5, 1194, 1194.1, 1197, 2698 *et seq.* and the applicable Industrial
12 Welfare Commission (“IWC”) Orders.

13 2. Plaintiff brings the First through Eighth Causes of Action individually and as a
14 class action on behalf of himself and certain current and former employees of DEFENDANTS
15 (hereinafter collectively referred to as “PLAINTIFFS” or “the Class,” and defined more fully
16 below).

17 3. PLAINTIFFS or the Class are current and former non-exempt employees of
18 DEFENDANTS that worked for DEFENDANTS in the State of California, for a period of time
19 within the four (4) years preceding the filing of this action.

20 4. Plaintiff Jose Luis Gonzalez is a resident of California, County of Kings. At all
21 relevant times herein, Plaintiff was employed by DEFENDANTS in the State of California as a
22 non-exempt, hourly employee.

23 5. Throughout the time period involved in this case, DEFENDANTS have
24 wrongfully failed to provide Plaintiff and the Class with timely, adequate, and duty-free meal
25 periods, by way of specific class-wide company policies and practices, including, but not
26 limited to, their shift and meal period scheduling policies and practices, and the lack of express
27 meal period policies. DEFENDANTS regularly required Plaintiff and the Class to work in
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1 excess of five consecutive hours a day without providing a 30-minute, continuous and
2 uninterrupted, meal period for every five hours of work, or without compensating Plaintiff and
3 the Class for meal periods that were not provided by the end of the fifth hour of work, or a
4 second meal break by the end of the tenth hour of work. DEFENDANTS did not inform
5 Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work
6 and did not inform Plaintiff and the Class of their right to take a second meal break for shifts
7 longer than 10 hours. Moreover, DEFENDANTS did not have legally compliant policies or
8 practices providing adequate and duty-free meal periods for Plaintiff and the Class, nor did
9 DEFENDANTS have legally compliant policies or practices regarding the timing of meal
10 periods. DEFENDANTS also did not have any policies or practices to properly record whether
11 the Plaintiff and the Class were taking their required meal periods as required by the applicable
12 IWC Wage Order(s). DEFENDANTS instituted a policy of auto-deducting a meal period
13 without providing a meal period or recording that a meal period had actually been taken.

14 6. Throughout the time period involved in this case, DEFENDANTS have
15 wrongfully failed to authorize or permit Plaintiff and the Class with timely, adequate, and
16 duty-free rest periods, by way of specific class-wide company policies and practices, including,
17 but not limited to, their shift and rest period scheduling policies and practices, and the lack of
18 express rest period policies that permitted a third rest period when non-exempt employees
19 worked shifts in excess of 10 hours. DEFENDANTS regularly required Plaintiff and the Class
20 to work in excess of eight hours without an authorized rest period without compensating
21 Plaintiff and the Class for rest periods that were not permitted or authorized every four hours
22 or major fraction thereof.

23 7. Throughout the time period involved in this case, DEFENDANTS maintained a
24 policy and practice of requiring Plaintiff and the Class to perform work “off-the-clock” that
25 was not compensated. This “off-the-clock” work regularly occurred, among other things, as a
26 result of DEFENDANTS unlawful rounding and time punch modification policies and
27 practices that modified employees’ recorded hours worked in a way that mostly, if not
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1 exclusively, favored DEFENDANTS. DEFENDANTS did not pay Plaintiff and the Class for
2 this work time, and some of this time should have been paid at the overtime and double time
3 rate of pay because Plaintiff and the Class worked shifts longer than eight and twelve hours in
4 a day. Moreover, this "off-the-clock" work also occurred as a result of DEFENDANTS'
5 automatic deduction of time for meal periods, even though DEFENDANTS failed to properly
6 record meal periods, and regardless of whether PLAINTIFF and the Class actually worked
7 through any amount of time automatically deducted each shift.

8 8. DEFENDANTS willfully failed and refused to timely pay Plaintiff and the Class
9 at the conclusion of their employment for the aforementioned "off-the-clock" work and
10 premium wages in connection with break violations. As a result, DEFENDANTS violated
11 California Labor Code §§ 201-203.

12 9. DEFENDANTS, as a matter of practice and policy, did not furnish Plaintiff and
13 the Class with accurate itemized wage statement that accurately show total hours worked by
14 Plaintiff and the Class, gross wages earned, net wages earned, and other information required
15 by Labor Code § 226(a). DEFENDANTS knowingly and intentionally failed to do so because,
16 among other things, the wages statements did not accurately state the total hours worked, the
17 overtime rates, the gross wages earned, and the net wages earned. As a result of these
18 violations of Section 226(a), the Plaintiff and the Class suffered injury because, among other
19 things: (a) the violations led them to believe that they were not entitled to be paid daily
20 minimum wages, overtime wages, and meal period premium wages, even though they were
21 entitled; (b) the violations led them to believe that they had been paid the minimum, overtime,
22 and meal period premium wages to which they were entitled, even though they had not been;
23 (c) the violations led them to believe they were not entitled to be paid minimum, overtime, and
24 meal period premium wages at the correct California rate even though they were; (d) the
25 violations led them to believe they had been paid minimum, overtime, and meal period
26 premium wages at the correct California rate even though they had not been; (e) the violations
27 hindered them from determining the amounts of minimum, overtime, and meal period premium
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1 wages owed to them; (f) in connection with their employment before and during this action,
2 and in connection with prosecuting this action, the violations caused them to have to perform
3 mathematical computations to determine the amounts of wages owed to them, computations
4 they would not have to make if the wage statements contained the required accurate
5 information; (g) by understating the wages truly due them, the violations caused them to lose
6 entitlement and/or accrual of the full amount of Social Security, disability, unemployment, and
7 other governmental benefits; (h) the wage statements inaccurately understated the wages,
8 hours, and wages rates to which Plaintiff and the Class were entitled, and Plaintiffs and the
9 Class were paid less than the wages and wage rates to which they were entitled. Thus, Plaintiff
10 and the Class are owed the amounts provided for in Labor Code § 226(e).

11 **THE PARTIES TO EACH CAUSE OF ACTION**

12 **A. Plaintiff**

13 10. Plaintiff Jose Luis Gonzalez resides in the State of California, County of Kings.
14 DEFENDANTS employed Plaintiff as an hourly, non-exempt flour packer in Hanford,
15 California, County of Kings. from around October 2003 until March 2019, with his last day of
16 work around July 31, 2017

17 11. Plaintiff reserves the right to seek leave to amend this complaint to add new
18 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
19 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

20 **B. Defendants**

21 12. Plaintiff is informed and believes, and based upon that information and belief
22 alleges, that DEFENDANTS are all corporations authorized to conduct business, and actually
23 conducting business, in the State of California, County of Kings. DEFENDANTS were the
24 employers of Plaintiff and the current and/or former employer of the putative Class.

25 13. Plaintiff does not know the true names or capacities of the persons or entities
26 sued herein as DOES 1-50, inclusive, and therefore sues said DEFENDANTS by such
27 fictitious names. Each of the DOE Defendants was in some manner legally responsible for the
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1 damages suffered by Plaintiff and the Class as alleged herein. Plaintiff will amend this
2 complaint to set forth the true names and capacities of these Defendants when they have been
3 ascertained, together with appropriate charging allegations, as may be necessary.

4 14. At all times mentioned herein, the Defendants named as DOES 1-50, inclusive,
5 and each of them, were residents of, doing business in, availed themselves of the jurisdiction
6 of, and/or injured a significant number of the Plaintiffs and the Class in the State of California.

7 15. Plaintiff is informed and believes and thereon alleges that at all relevant times
8 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff
9 and the other employees described in the class definitions below, and exercised control over
10 their wages, hours, and working conditions. Plaintiff is informed and believes and thereon
11 alleges that each Defendant acted pursuant to and within the scope of the relationships alleged
12 above, that each Defendant knew or should have known about, and authorized, ratified,
13 adopted, approved, controlled, or aided and abetted the conduct of all other Defendants.

14 **CLASS ACTION ALLEGATIONS**

15 16. Plaintiff brings this action individually, as well as on behalf of each and all
16 other persons similarly situated, and thus, seeks class certification under California Code of
17 Civil Procedure § 382.

18 17. All claims alleged herein arise under California law for which PLAINTIFFS
19 seek relief authorized by California law.

20 18. The proposed Class consists of and is defined as:

21 All persons employed by Defendants to work in any hourly paid, non-exempt job
22 position for Lacey Milling Company. as either a temporary or permanent
23 employee, in California at any time during the period beginning four years before
24 the filing of the initial complaint in this action up to and including the date the
Court certifies a class. For purposes of this definition, "DEFENDANTS" means
Lacey Milling Company and any of the fictitiously named defendants (Does 1
through 50).

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26 19. Plaintiff reserves the right to establish other sub-classes as appropriate.

27 20. At all material times, Plaintiff was a member of the Class.
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1 21. Plaintiff undertakes this action for the benefit of all Class members.

2 22. There is a well-defined community of interest in the litigation and the Class is
3 readily ascertainable:

4 (a) Numerosity: The members of the Class (and each subclass, if any) are so
5 numerous that joinder of all members would be unfeasible and
6 impractical. The membership of the entire Class is unknown to Plaintiff
7 at this time, however, the Class is estimated to be greater than 100
8 individuals and the identity of such membership is readily ascertainable
9 by inspection of Defendants' records.

10 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
11 protect the interests of each Class member with whom there is a shared,
12 well-defined community of interest, and Plaintiff's claims (or defenses,
13 if any) are typical of all Class members' claims as demonstrated herein.

14 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
15 protect the interests of each Class member with whom there is a shared,
16 well-defined community of interest and typicality of claims, as
17 demonstrated herein. Plaintiff has no conflicts with or interests
18 antagonistic to any Class member. Plaintiff's attorneys, the proposed
19 class counsel, are versed in the rules governing class action discovery,
20 certification, and settlement. Plaintiff has incurred, and throughout the
21 duration of this action, will continue to incur costs and attorneys' fees
22 that have been, are, and will be necessarily expended for the prosecution
23 of this action for the substantial benefit of each class member.

24 (d) Superiority: A Class Action is superior to other available methods for
25 the fair and efficient adjudication of the controversy, including
26 consideration of:

27 1) The interests of the members of the Class in individually
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- 1 controlling the prosecution or defense of separate actions;
- 2 2) The extent and nature of any litigation concerning the
- 3 controversy already commenced by or against members of the
- 4 Class;
- 5 3) The desirability or undesirability of concentrating the litigation of
- 6 the claims in the particular forum; and
- 7 4) The difficulties likely to be encountered in the management of a
- 8 class action.
- 9 (e) Public Policy Considerations: Employers in the State of California
- 10 violate employment and labor laws every day. Current employees are
- 11 often afraid to assert their rights out of fear of direct or indirect
- 12 retaliation. Former employees are fearful of bringing actions because
- 13 they believe their former employers might damage their future endeavors
- 14 through negative references and/or other means. Class actions provide
- 15 the class members who are not named in the complaint with a type of
- 16 anonymity that allows for the vindication of their rights at the same time
- 17 as their privacy is protected.
- 18 23. There are common questions of law and fact as to the Class (and each subclass,
- 19 if any) that predominate over questions affecting only individual members, including without
- 20 limitation, whether, as alleged herein, DEFENDANTS have:
- 21 (a) Failed to provide meal periods and pay meal period premium wages to
- 22 Class members;
- 23 (b) Failed to pay Class members for all hours worked, including minimum
- 24 wages, straight time wages, and overtime wages;
- 25 (c) Failed to promptly pay all wages due to Class members upon their
- 26 discharge or resignation;
- 27 (d) Failed to provide Class members with accurate wages statements;
- 28

1 24. This Court should permit this action to be maintained as a class action pursuant
2 to California Code of Civil Procedure § 382 because:

- 3 (a) The questions of law and fact common to the Class predominate over
4 any question affecting only individual members;
- 5 (b) A class action is superior to any other available method for the fair and
6 efficient adjudication of the claims of the members of the Class;
- 7 (c) The members of the Class are so numerous that it is impractical to bring
8 all members of the class before the Court;
- 9 (d) Plaintiffs, and the other members of the Class, will not be able to obtain
10 effective and economic legal redress unless the action is maintained as a
11 class action;
- 12 (e) There is a community of interest in obtaining appropriate legal and
13 equitable relief for the statutory violations, and in obtaining adequate
14 compensation for the damages and injuries for which DEFENDANTS
15 are responsible in an amount sufficient to adequately compensate the
16 members of the Class for the injuries sustained;
- 17 (f) Without class certification, the prosecution of separate actions by
18 individual members of the class would create a risk of:
- 19 1) Inconsistent or varying adjudications with respect to individual
20 members of the Class which would establish incompatible
21 standards of conduct for DEFENDANTS; and/or
- 22 2) Adjudications with respect to the individual members which
23 would, as a practical matter, be dispositive of the interests of
24 other members not parties to the adjudications, or would
25 substantially impair or impede their ability to protect their
26 interests, including but not limited to the potential for exhausting
27 the funds available from those parties who are, or may be,
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1 responsible DEFENDANTS; and,

2 (g) DEFENDANTS have acted or refused to act on grounds generally
3 applicable to the Class, thereby making final injunctive relief appropriate
4 with respect to the class as a whole.

5 25. Plaintiff contemplates the eventual issuance of notice to the proposed members
6 of the Class that would set forth the subject and nature of the instant action. The
7 DEFENDANTS' own business records may be utilized for assistance in the preparation and
8 issuance of the contemplated notices. To the extent that any further notices may be required,
9 Plaintiff would contemplate the use of additional techniques and forms commonly used in class
10 actions, such as published notice, e-mail notice, website notice, first-class mail, or
11 combinations thereof, or by other methods suitable to the Class and deemed necessary and/or
12 appropriate by the Court.

13 **FIRST CAUSE OF ACTION**

14 **(Against All Defendants for Failure to Provide Meal Periods)**
15 **[Cal. Lab. Code §§ 226.7, 512, and the applicable IWC Wage Order(s)]**

16 26. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
17 material allegations set out in this Complaint.

18 27. Under California law, DEFENDANTS have an affirmative obligation to relieve
19 the Plaintiff and the Class of all duty in order to take their first daily meal periods no later than
20 fifth hour of work in a workday, and to take their second meal periods no later than the tenth
21 hour of work in the workday.

22 28. Despite these legal requirements, DEFENDANTS regularly failed to provide
23 Plaintiff and the Class with both meal periods as required by California law.

24 29. Under California law, Plaintiff and the Class are entitled to be paid one hour of
25 additional wages for each instance he or she was not provided with all required meal period(s).

26 30. DEFENDANTS regularly failed to pay Plaintiff and the Class the additional
27 wages to which they were entitled for meal periods and that were not provided.
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1 31. As a result, DEFENDANTS are liable to Plaintiff and the Class for one hour of
2 additional wages for each work day for a meal period that was not provided.

3 32. By failing to keep adequate time records required by Labor Code § 1174(d),
4 DEFENDANTS have made it difficult to calculate the full extent of meal period premium
5 wage compensation due to Plaintiff and the Class Members.

6 33. California Labor Code section 204 requires employers to provide employees
7 with all wages due and payable twice a month. Throughout the statute of limitations period
8 applicable to this cause of action, Plaintiff and the Class were entitled to be paid twice a month
9 at rates required by law, including meal period premium wages for each meal period that was
10 not provided. However, during all such times, DEFENDANTS systematically failed and
11 refused to pay Plaintiff and the Class all such wages due, and failed to pay those wages twice a
12 month.

13 34. DEFENDANTS are also liable to Plaintiff and the Class for the civil penalties
14 provided for in Labor Code § 558 because of the violations alleged in this cause of action.

15 **SECOND CAUSE OF ACTION**

16 **(Against all Defendants for Failure to Pay Minimum Wage and Straight Time Wages)**
17 **[Cal. Lab. Code §§204 and 1194, and the applicable IWC Wage Order(s)]**

18 35. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
19 material allegations set out in this Complaint.

20 36. “Hours worked” is the time during which an employee is subject to the control
21 of an employer, and includes all the time the employee is suffered or permitted to work,
22 whether or not required to do so.

23 37. At all relevant times herein mentioned, DEFENDANTS knowingly failed to pay
24 to Plaintiff and the other members of the Class compensation for all hours they worked.

25 38. Accordingly, Plaintiff and the other members of the Class are entitled to recover
26 straight time wages for all non-overtime hours worked for DEFENDANTS.

27 39. By and through the conduct described above, the Plaintiff and the other
28 members of the Class, have been deprived of their rights to be paid wages earned by virtue of

1 their employment with DEFENDANTS.

2 40. By virtue of the DEFENDANTS' unlawful failure to pay additional
3 compensation to the Class for their non-overtime hours worked without pay, the Class has
4 suffered, and will continue to suffer, damages in amounts which are presently unknown to the
5 Class, but which exceed the jurisdictional minimum of this Court, and which will be
6 ascertained according to proof at trial.

7 41. By failing to keep adequate time records required by Labor Code § 1174(d),
8 DEFENDANTS have made it difficult to calculate the full extent of compensation due Plaintiff
9 and the Class Members.

10 42. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
11 entitled to recover liquidated damages (double damages) for DEFENDANTS' failure to pay
12 minimum wages.

13 43. California Labor Code section 204 requires employers to provide employees
14 with all wages due and payable twice a month. Throughout the statute of limitations period
15 applicable to this cause of action, Plaintiff and the Class members were entitled to be paid
16 twice a month at rates required by law, including minimum wages and straight time wages.
17 However, during all such times, DEFENDANTS systematically failed and refused to pay
18 Plaintiff and the Class members all such wages due, and failed to pay those wages twice a
19 month.

20 44. Plaintiff and the Class are also entitled to seek recovery of all unpaid wages,
21 interest, and reasonable attorneys' fees and costs pursuant to Cal. Labor Code §§ 218.5 and
22 218.6.

23 45. DEFENDANTS are also liable to the Class for the civil penalties provided for in
24 Labor Code § 558, because of the violations alleged in this cause of action.

25 **THIRD CAUSE OF ACTION**

26 **(Against all Defendants for Failure to Pay Overtime Wages)**
27 **[Cal. Lab. Code §§ 510, 1194 and 1198 and the applicable IWC Wage Order(s)]**

28 46. Plaintiff incorporates by reference and re-alleges as if fully stated herein the

1 material allegations set out in this Complaint.

2 47. California Labor Code § 510 provides that employees in California shall not be
3 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
4 they receive additional compensation beyond their regular wages in amounts specified by law.

5 48. California Labor Code §§ 1194 and 1198 provide that employees in California
6 shall not be employed more than eight hours in any workday unless they receive additional
7 compensation beyond their regular wages in amounts specified by law. Additionally,
8 California Labor Code § 1198 states that the employment of an employee for longer hours than
9 those fixed by the Industrial Welfare Commission is unlawful.

10 49. At all times relevant hereto, Plaintiff and the members of the Class have worked
11 more than eight, and at times more than twelve, hours in a workday, as employees of
12 DEFENDANTS. Further, at all times relevant hereto, Plaintiff and the members of the Class
13 have been paid on an hourly basis.

14 50. At all times relevant hereto, DEFENDANTS failed to pay the Plaintiff and the
15 other members of the Class overtime compensation for the hours they have worked in excess
16 of the maximum hours permissible by law as required by California Labor Code § 510 and
17 1198. Plaintiffs and the other members of the Class are regularly required to work overtime
18 hours.

19 51. By virtue of DEFENDANTS' unlawful failure to pay additional, premium rate
20 compensation to the Plaintiffs and the other members of the Class for their overtime hours
21 worked, the Plaintiffs and the other members of the Class have suffered, and will continue to
22 suffer, damages in amounts which are presently unknown to them but which exceed the
23 jurisdictional minimum of this Court and which will be ascertained according to proof at trial.

24 52. By failing to keep adequate time records required by Labor Code § 1174(d),
25 DEFENDANTS have made it difficult to calculate the full extent of overtime compensation
26 due Plaintiffs and the Class Members.

53. California Labor Code section 204 requires employers to provide employees with all wages due and payable twice a month. Throughout the statute of limitations period applicable to this cause of action, Plaintiff and the Class members were entitled to be paid twice a month at rates required by law, including overtime wages. However, during all such times, DEFENDANTS systematically failed and refused to pay Plaintiff and the Class members all such wages due, and failed to pay those wages twice a month.

54. Plaintiff and the other members of the Class also request recovery of overtime compensation according to proof, interest, attorneys' fees and costs pursuant to California Labor Code §§ 218.5 and 1194(a), as well as the assessment of any statutory penalties against DEFENDANTS, in a sum as provided by the California Labor Code and/or other statutes. Further, Plaintiff and the other members of the Class, are entitled to seek and recover reasonable attorneys' fees and costs pursuant to California Labor Code §§ 218.5 and 1194.

FOURTH CAUSE OF ACTION
(Against all Defendants for Failure to Pay All Wages Due to Discharged or Terminated Employees)
[Cal. Lab. Code §§ 201 – 204; and the applicable IWC Wage Order(s)]

55. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations set out in this Complaint.

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

57. Within the applicable statute of limitations, the employment of Plaintiff and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, DEFENDANTS failed, and continue to fail to pay Plaintiffs and terminated Class members, without abatement,

1 all wages required to be paid by California Labor Code sections 201 and 202 either at the time
2 of discharge, or within seventy-two (72) hours of their leaving DEFENDANTS' employ.

3 58. DEFENDANTS' failure to pay Plaintiff and those Class members who are no
4 longer employed by DEFENDANTS their wages earned and unpaid at the time of discharge, or
5 within seventy-two (72) hours of their leaving DEFENDANTS' employ, is in violation of
6 California Labor Code §§ 201 and 202.

7 59. California Labor Code § 203 provides that if an employer willfully fails to pay
8 wages owed, in accordance with sections 201 and 202, then the wages of the employee shall
9 continue as a penalty wage from the due date, and at the same rate until paid or until an action
10 is commenced; but the wages shall not continue for more than thirty (30) days. Plaintiff and
11 the Class members are entitled to recover from DEFENDANTS their additionally accruing
12 wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days
13 maximum pursuant to California Labor Code § 203.

14 **FIFTH CAUSE OF ACTION**
15 **(Against all Defendants for Failure to Provide Accurate Statements and Maintain**
16 **Required Records)**
17 **[Cal. Lab. Code § 226 and the applicable IWC Wage Order(s)]**

18 60. Plaintiff incorporates by reference and re-alleges as if fully stated herein the
19 material allegations set out in this Complaint.

20 61. At all material times set forth herein, California Labor Code § 226(a) provides
21 that every employer shall furnish each of his or her employees an accurate itemized wage
22 statement in writing showing nine pieces of information, including: (1) gross wages earned, (2)
23 total hours worked by the employee, (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, provided
25 that all deductions made on written orders of the employee may be aggregated and shown as
26 one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
27 paid, (7) the name of the employee and the last four digits of his or her social security number
28 or an employee identification number other than a social security number, (8) the name and
address of the legal entity that is the employer, and (9) all applicable hourly rates in effect

1 during the pay period and the corresponding number of hours worked at each hourly rate by the
2 employee.

3 62. DEFENDANTS have intentionally and willfully failed to provide employees
4 with complete and accurate wage statements. The deficiencies include, among other things,
5 the failure to correctly identify the gross wages earned by Plaintiffs and the members of the
6 Class, the failure to list the true “total hours worked by the employee,” the failure to list the
7 true net wages earned, and the failure to list the name and address of the legal entity(s) that
8 employ Plaintiffs and the Class.

9 63. As a result of DEFENDANTS’ violation of California Labor Code § 226(a),
10 Plaintiff and the members of the Class have suffered injury and damage to their statutorily-
11 protected rights.

12 64. Specifically, Plaintiff and the members of the Class have been injured by
13 DEFENDANTS’ intentional violation of California Labor Code § 226(a) because they were
14 denied both their legal right to receive, and their protected interest in receiving, accurate,
15 itemized wage statements under California Labor Code § 226(a).

16 65. Calculation of the true wage entitlement for Plaintiff and the Class is difficult
17 and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also
18 injured as a result of having to bring this action to attempt to obtain correct wage information
19 following DEFENDANTS’ refusal to comply with many of the mandates of California’s Labor
20 Code and related laws and regulations.

21 66. Plaintiff and Class members are entitled to recover from DEFENDANTS the
22 greater of their actual damages caused by DEFENDANTS’ failure to comply with California
23 Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per
24 employee.

25 67. Plaintiff and the members of the Class are also entitled to injunctive relief to
26 ensure compliance with this section, pursuant to California Labor Code § 226(g).

27 **SIXTH CAUSE OF ACTION**
28 **(Against all Defendants for Violation of California Business & Professions Code §§ 17200,**

et seq.)

68. Plaintiff incorporates by reference and re-alleges as if fully stated herein the material allegations and Causes of Action set out in this Complaint.

69. DEFENDANTS, and each of them, are “persons” as defined under Business & Professions Code § 17201.

70. DEFENDANTS’ conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

71. DEFENDANTS’ activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code § 17200, et seq.

72. A violation of California Business & Professions Code §§ 17200, et seq. may be predicated on the violation of any state or federal law. All of the acts described herein as violations of, among other things, the California Labor Code, are unlawful and in violation of public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of California Business and Professions Code §§ 17200, et seq.

Failing to Pay Minimum and Straight Time Wages

73. DEFENDANTS’ failure to pay minimum and straight time wages constitutes unlawful and/or unfair activity prohibited by Business and Professions Code §§ 17200, et seq.

Failing to Pay Overtime

74. DEFENDANTS’ failure to pay overtime compensation and other benefits in violation of Cal. Labor Code §§ 510, 1197, 1198, Penal Code §§ 484 and 532 (obtaining labor through false pretenses), constitutes unlawful and/or unfair activity prohibited by Business and Professions Code § 17200, et seq.

Failing to Provide Accurate Statements and Maintain Required Records

75. DEFENDANTS’ failure to provide accurate itemized wage statements in

1 accordance with Labor Code § 226, as alleged above, constitutes unlawful and/or unfair
2 activity prohibited by Business and Professions Code §§ 17200, et seq.

3 76. By and through their unfair, unlawful and/or fraudulent business practices
4 described herein, the DEFENDANTS, have obtained valuable property, money and services
5 from Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons
6 similarly situated, of valuable rights and benefits guaranteed by law, all to their detriment.

7 77. Plaintiff and the other Class members suffered monetary injury as a direct result
8 of DEFENDANTS' wrongful conduct.

9 78. The Plaintiff, individually, and on behalf of members of the putative Class, is
10 entitled to, and does, seek such relief as may be necessary to disgorge money and/or property
11 which the DEFENDANTS have wrongfully acquired, or of which PLAINTIFFS have been
12 deprived, by means of the above-described unfair, unlawful and/or fraudulent business
13 practices. Plaintiff and the members of the Class are not obligated to establish individual
14 knowledge of the wrongful practices of DEFENDANTS in order to recover restitution.

15 79. The Plaintiff, individually, and on behalf of members of the Class, is further
16 entitled to and does seek a declaration that the above described business practices are unfair,
17 unlawful and/or fraudulent, and injunctive relief restraining the DEFENDANTS, and each of
18 them, from engaging in any of the above-described unfair, unlawful and/or fraudulent business
19 practices in the future.

20 80. The Plaintiff, individually, and on behalf of members of the Class, has no plain,
21 speedy, and/or adequate remedy at law to redress the injuries, which the Class members
22 suffered as a consequence of the DEFENDANTS' unfair, unlawful and/or fraudulent business
23 practices. As a result of the unfair, unlawful and/or fraudulent business practices described
24 above, the Plaintiff, individually, and on behalf of members of the putative Class, has suffered
25 and will continue to suffer irreparable harm unless the DEFENDANTS, and each of them, are
26 restrained from continuing to engage in said unfair, unlawful and/or fraudulent business
27 practices.

1 81. The Plaintiff also alleges that if DEFENDANTS are not enjoined from the
2 conduct set forth herein above, they will continue to avoid paying the appropriate taxes,
3 insurance and other withholdings.

4 82. Pursuant to California Business & Professions Code §§ 17200, et seq., Plaintiff
5 and the putative Class members are entitled to restitution of the wages withheld and retained
6 by DEFENDANTS during a period that commences four years prior to the filing of this
7 complaint; a permanent injunction requiring DEFENDANTS to pay all outstanding wages due
8 to Plaintiff and the Class members; an award of attorneys' fees pursuant to California Code of
9 Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

10 **SEVENTH CAUSE OF ACTION**

11 **(Against All Defendants for Rest Period Violations)**

12 83. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 84. The applicable Wage Orders and California Labor Code §§ 226.7 and 516
14 establish the right of employees to be provided with a rest period of at least ten (10) minutes for
15 each four (4) hour period worked, or major fraction thereof.

16 85. Due to their unlawful rest period policy and practice, DEFENDANTS did not
17 authorize and permit employees to take all rest periods to which they were legally entitled for the
18 reasons set forth in the factual allegations and class definitions sections of this Complaint.

19 86. The foregoing violations create an entitlement to recovery by Plaintiff and
20 members of the Rest Period Class in a civil action for the unpaid amount of rest period premiums
21 owing, including interest thereon, statutory penalties, and costs of suit pursuant to Wage Order 9,
22 California Labor Code §§ 226.7 and 516, and Civil Code §§ 3287(b) and 3289.

23 **EIGHTH CAUSE OF ACTION**

24 **(Against All Defendants for Violations of the Private Attorneys General Act)**

25 87. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

26 88. Defendants have committed several Labor Code violations against Plaintiff,
27 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
28 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other
aggrieved employees, brings this representative action against Defendants to recover the civil

1 penalties due to Plaintiff, the members of the Classes, other aggrieved employees, and the State
2 of California according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including,
3 but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee
4 and \$200 for each subsequent violation or willful or intentional violation pursuant to Labor
5 Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld;
6 (2) \$50.00 for each initial violation and \$100 for each subsequent violation pursuant to Labor
7 Code § 558 per employee per pay period, plus an amount sufficient to recover the unpaid wages
8 owed to each aggrieved employee; (3) \$100.00 for each initial violation and \$250.00 for each
9 subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00
10 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code §
11 226.3 per employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for
12 each subsequent violation per employee per pay period for those violations of the Labor Code
13 for which no civil penalty is specifically provided, based on the following Labor Code
14 violations:

- 15 (a) Failing to pay minimum wages for all hours worked to Plaintiff, the Minimum
16 Wage Class, and other aggrieved employees in violation of Labor Code §§ 558,
17 1182.12, 1194, 1194.2, 1197, and 1198;
- 18 (b) Failing to pay Plaintiff, the Overtime Class, and other aggrieved employees all
19 earned overtime compensation in violation of Labor Code §§ 204, 510, 558, 1194,
20 and 1198;
- 21 (c) Failing to provide all legally required meal periods, and failure to pay meal period
22 premium wages, to Plaintiff, the Meal Period Class, and other aggrieved
23 employees at the regular rate of compensation in violation of Labor Code §§
24 226.7, 512, 558, and 1198;
- 25 (d) Failing to authorize and permit all legally required rest periods, and failure to pay
26 rest period premium wages, to Plaintiff, the Rest Period Class, and other
27 aggrieved employees at the regular rate of compensation in violation of Labor
28 Code §§ 226.7, 516, 558, and 1198;
- (e) Failing to furnish Plaintiff, the Wage Statement Class, and other aggrieved

employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;

- (f) Failing to timely pay all final wages and compensation earned by Plaintiff, the Waiting Time Class, and other aggrieved employees at the time of separation in violation of Labor Code §§ 201, 202, and 203;
- (g) Failing to pay non-exempt employees all earned wages at least twice during each calendar month in violation of Labor Code § 204; and
- (h) Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

89. On March 3, 2020, Plaintiff notified Defendants via certified mail, and notified the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 et seq. with respect to violations of the California Labor Code identified in Paragraph 88 (a)-(h). Now that the LWDA has not provided notice that it intends to investigate the violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

90. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

PRAYER FOR RELIEF

Plaintiff, individually, and on behalf of all others similarly situated, pray for relief and judgment against DEFENDANTS, jointly and severally, as follows:

Class Certification

- That this action be certified as a class action;
- That Plaintiff be appointed as the representative of the Class; and

- That counsel for Plaintiff be appointed as Class Counsel.

As to the First Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code §§ 226.7 and 512, and the IWC Wage Orders;
- For general unpaid wages and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Second Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated Labor Code § 204 and 1194;
- For general unpaid wages and such general and special damages as may be appropriate;
- For pre-judgment interest on any unpaid compensation commencing from the date such amounts were due;
- For liquidated damages;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Third Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and Class members;
- For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

- For pre-judgment interest on any unpaid overtime compensation commencing from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other terminated class members;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory wage penalties pursuant to California Labor Code § 203 for Plaintiff and all other class members who have left DEFENDANTS' employ;
- For pre-judgment interest on any unpaid wages from the date such amounts were due;
- For reasonable attorneys' fees and for costs of suit incurred herein; and
- For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated the record keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders as to Plaintiff and class members, and willfully failed to provide accurate itemized wage statements thereto;
- For all actual, consequential and incidental losses and damages, according to proof;
- For statutory penalties, pursuant to California Labor Code § 226(e);
- For injunctive relief to ensure compliance with this section, pursuant to California Labor Code § 226(g);
- For reasonable attorneys' fees and for costs of suit incurred herein; and

- For such other and further relief as the Court may deem equitable and appropriate.

As to the Sixth Cause of Action

- That the Court declare, adjudge and decree that DEFENDANTS violated California Business and Professions Code §§ 17200, et seq. by failing to provide Plaintiff and class members with meal periods, failing to provide all compensation due to them, failing to provide accurate itemized wage statements, and failing to pay Plaintiff's and class members' wages timely as required by California Labor Code §§ 201, 202 and 203;
- For restitution of unpaid wages to Plaintiff and all class members and prejudgment interest from the day such amounts were due and payable;
- For the appointment of a receiver to receive, manage and distribute any and all funds disgorged from DEFENDANTS and determined to have been wrongfully acquired by DEFENDANTS as a result of violations of California Business & Professions Code §§ 17200 et seq.;
- For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Code of Civil Procedure § 1021.5;
- For injunctive relief to ensure compliance with this section, pursuant to California Business & Professions Code § 17200, et seq.; and,
- For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

- For any additional relief that the Court deems just and proper.

Dated: April 9, 2020

Respectfully submitted,

STANSBURY BROWN LAW

By: 

Daniel Brown
Attorneys for Plaintiff Jose Luis Gonzalez
and all other similarly situated employees of
Defendants

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DEMAND FOR JURY TRIAL

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

DATED: April 9, 2020

Respectfully submitted,

STANBURY BROWN LAW



By:

Daniel J. Brown
Attorneys for Plaintiff Jose Luis Gonzalez
and all other similarly situated employees of
Defendants