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and other similarly-situated employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SACRAMENTO

HUMBERTO CASTREJON, JR., on
behalf of himself and other similarly-
situated employees,

Plaintiff,

v.

WESTROCK SERVICES, LLC, a Georgia
Limited Liability Company and DOES 1
through 10, inclusive,

Defendants.

CASE NO. 34-2020-00279027

**CLASS AND PAGA REPRESENTATIVE
ACTION**

**FIRST AMENDED COMPLAINT FOR
DAMAGES, CIVIL PENALTIES, AND
RESTITUTION**

1. FAILURE TO PAY MINIMUM WAGES
2. FAILURE TO PAY OVERTIME WAGES
3. FAILURE TO PROVIDE MEAL PERIODS
4. FAILURE TO PROVIDE REST PERIODS
5. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS
6. FAILURE TO PAY WAGES TIMELY TO TERMINATED EMPLOYEES
7. UCL CLAIM
8. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM, REGULAR, AND/OR OVERTIME WAGES

FILED/ENDORSED

JUN 25 2020

By: K. Spichka
Deputy Clerk

BY FAX

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9. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE MEAL PERIODS
10. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE REST PERIODS
11. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE, ITEMIZED WAGE STATEMENTS
12. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES DUE DURING AND UPON TERMINATION OF EMPLOYMENT
13. CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO RECORD ALL HOURS WORKED

DEMAND FOR JURY TRIAL

1 Plaintiff HUMBERTO CASTREJON, JR. ("Plaintiff"), individually and on behalf of
2 other similarly-situated and aggrieved employees, hereby alleges as follows:

3 I.

4 INTRODUCTION

5 1. Plaintiff brings this proposed class action and PAGA Representative Action
6 against his former employer WESTROCK SERVICES, LLC, a Georgia Limited Liability
7 Company, and DOES 1-10 (collectively referred to as "Defendants") for: failure to pay minimum,
8 regular, and overtime wages; failure to provide meal and rest periods or premiums in lieu thereof;
9 failure to provide accurate itemized wage statements; failure to timely pay wages due during and
10 upon to termination of employment; failure to maintain records of all hours worked; and for unfair
11 competition under Business and Professions Code sections 17200, *et seq.*

12 2. Plaintiff brings this lawsuit as a PAGA Representative Action on behalf of the
13 state of California, and aggrieved current and former employees. Pursuant to Labor Code sections
14 2698, *et seq.*, Plaintiff seeks to recover civil penalties, and reasonable attorney's fees and costs.
15 Plaintiff, by operation of law, has standing and capacity to sue as a representative of the State of
16 California. Plaintiff mailed written notice of the specific provisions of the code that Defendants
17 violated, including the facts and theories to support the alleged violations, to the LWDA and to
18 Westrock Service, LLC on April 20, 2020. A true and correct copy of the notice is attached as
19 Exhibit A and incorporated by this reference. Defendants did not provide notice of cure and the
20 LWDA did not provide notice of investigation in the 65 days after the April 20, 2020 mailing of
21 the PAGA notice.

22 3. Pursuant to Cal. Labor Code sections 2698, *et seq.*, Plaintiff seeks to represent all
23 current and former aggrieved employees of Defendants who suffered one or more of the alleged
24 violations ("aggrieved employees") as described herein during the applicable limitations period
25 for the time period covered by the PAGA. The applicable limitations period is referred to herein
26 as "the PAGA Period."

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II.

JURISDICTION AND VENUE

4. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure section 395. Defendants designated principle place of business in the city and county of Sacramento and each Defendant is within the jurisdiction of this Court for service of process purposes. The unlawful acts alleged have a direct effect on Plaintiff and other similarly-situated and aggrieved employees within the State of California and Sacramento. Defendants employ numerous employees in Sacramento and in California generally. There is no federal question at issue for removal under 28 U.S.C. section 1331, as the issues herein are based solely on California statutes and law, including the Labor Code, IWC Wage Orders, and the Code of Civil Procedure.

5. Plaintiff alleges, on information and belief, that no federal question is raised and that the Class Action Fairness Act ("CAFA"), 28 U.S.C. section 1332(d), does not apply, or in the alternative, that exceptions for local case or controversy under the CAFA do apply and prohibit removal of the action to federal court. Plaintiff is also informed and believes that based on his rate of pay, his individual claims do not rise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Plaintiff is also informed and believes that his individual PAGA claims do not rise to the necessary amount in controversy so as to implicate traditional jurisdiction under 28 U.S.C. section 1332(a) or jurisdiction under the CAFA. Further, as a representative action under the PAGA, the matter is not subject to removal under 28 U.S.C. sections 1332(a)-(d). PAGA civil penalty actions are not subject to federal jurisdiction.

III.

THE PARTIES

6. Plaintiff HUMBERTO CASTREJON, JR. is a former employee of Defendants. At all relevant times, he was employed by Defendants as a roll clamp operator in California. He was discharged from employment in or around May 24, 2019.

7. Plaintiff alleges that he and all other non-exempt hourly employees in the State of

1 California worked under Defendants' policies and as a result, suffered the same violations alleged
2 herein.

3 8. Pursuant to the Court Order filed March 19, 2020, and all subsequent amendments
4 thereto, including the order filed on May 15, 2020, any day during the time period of March 20,
5 2020 to and including June 12, 2020 is considered a holiday for purposes of computing the date
6 for filing papers with the court pursuant to Code of Civ. Proc. §§ 12 and 12(a). Accordingly, the
7 Class Period is defined as the four years preceding the filing of this complaint including those
8 days which the Court has declared as holidays, or March 20, 2016 until the commencement of
9 trial in this matter. Moreover, the statute of limitations for this matter was tolled pursuant to Cal.
10 Rules of Court, Appendix I, Emergency Rule No. 9.

11 9. Plaintiff was employed by the alleged violators and had one or more of the alleged
12 violations committed against him and, therefore, is properly suited to represent the interests of all
13 other current and former similarly-situated and aggrieved employees of Defendants.

14 10. Plaintiff is informed and believes, and based thereon alleges, that Defendant
15 Westrock Services, LLC is a Georgia Limited Liability Company that provides paper and
16 packaging solutions.

17 11. Pursuant to California Labor Code sections 558 and 558.1, Defendants are
18 employers of Plaintiff, and/or a person acting on behalf of Plaintiff's employer, who violated, or
19 caused to be violated, any provision regulating minimum wages or hours and days of work in the
20 applicable order of the Industrial Welfare Commission, as well as California Labor Code sections
21 203, 226, 226.7, 1193.6, and 1194.

22 12. At all times relevant Westrock Services, LLC did, and does, transact and conduct
23 business in the state of California and within the jurisdiction of the Court. At all times relevant,
24 Westrock Services, LLC was Plaintiff's and other similarly-situated and aggrieved employees'
25 employer for purposes of the California wage and hour laws at issue in this action.

26 13. Plaintiff is unaware of the true names, capacities, relationships, and extent of
27 participation in the conduct alleged of Defendants sued as DOES 1 through 10, but is informed
28 and believes, and based on that alleges, that DOE Defendants are legally responsible for the

1 wrongful conduct alleged, and sues these Defendants by such fictitious names. Plaintiff will
2 amend this complaint when their true names and capabilities are ascertained.

3 14. Plaintiff is informed and believes and, based thereon alleges, that each Defendant,
4 directly or indirectly, or through agents or other persons, employed Plaintiff and other similarly-
5 situated and aggrieved employees, and exercised control over their wages, hours, and working
6 conditions. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
7 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a
8 joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each
9 Defendant is legally attributable to the other Defendants.

10 IV.

11 **GENERAL ALLEGATIONS**

12 15. At all times during the liability period, Plaintiff and similarly-situated and
13 aggrieved current and former employees were employed by Defendants and each of them,
14 including Doe Defendants, within the state of California.

15 16. During the Class Period, Defendants maintained common policies and practices
16 applicable to Defendants' employees, including Plaintiff. These policies included failing to pay
17 all required wages for all hours worked, including all minimum, regular, overtime, failing to pay
18 all wages due during and upon termination of employment, failing to provide adequate wage
19 statements, failing to provide all lawful meal and rest periods and/or pay an hour's worth of pay
20 in lieu thereof, and failing to maintain accurate record of hours worked.

21 17. At all relevant times, Plaintiff and other similarly-situated and aggrieved
22 employees of Defendants worked under these common policies and practices.

23 18. The California Labor Code and applicable IWC Wage Order and portions of the
24 California Code of Regulations provide that all persons employed in the State of California shall
25 be (1) presumed to be an hourly or non-exempt employee; (2) that all "hours worked" and subject
26 to the control of the employer, whether exercised or not, are to be paid at least the minimum wage
27 as determined by the State of California, and for overtime wages at either 1.5x the regular rate of
28 pay or 2.0x the regular rate of pay when "hours worked" exceeds 8 hours in a single day or shift,

1 or over 40 hours in a 168-total hour workweek. Labor Code sections 1194, *et seq.* provide that
2 notwithstanding any agreement to work for a lesser wage, an employee receiving less than the
3 legal overtime or minimum wage compensation is entitled to recover in a civil action the unpaid
4 balance of their owed compensation, including interest thereon, reasonable attorneys' fees, and
5 costs of suit.

6 19. Plaintiff and all similarly-situated and aggrieved employees are covered under one
7 or more IWC Wage Orders ("Wage Orders"), and Labor Code section 510, and/or other
8 applicable wage orders, regulations, and statutes, and each similarly-situated and aggrieved
9 employee was not subject to an exemption for executive, administrative, professional employees,
10 or any other exemption, which imposed an obligation on the part of the Defendants to pay Plaintiff
11 and similarly-situated and aggrieved employees lawful minimum and overtime compensation, as
12 well as to provide statutory meal and rest periods.

13 20. Plaintiff and each similarly-situated and aggrieved employee worked in excess of
14 the maximum regular rate hours set by the IWC in the above Wage Orders, regulations, or statutes,
15 and are therefore entitled to appropriate overtime compensation at time and a half (1½) rate of
16 their regular rates of pay, and when applicable, double-time rates as set forth by the above Wage
17 Orders, regulations, and/or statutes.

18 21. During the Class Period, Defendants maintained a common policy and practice of
19 failing to pay Plaintiff and other similarly-situated and aggrieved employees for all hours worked.

20 22. Plaintiff also alleges Defendants did not pay him or other similarly-situated and
21 aggrieved employees at least minimum wages for all hours worked because they did not pay for
22 time spent working by attending pre-shift meetings.

23 23. Defendants required their employees to attend a weekly pre-shift work meeting
24 and failed to pay all wages for all of this time spent working and under the direction and control
25 of the Defendants. For example, Defendants required a daily 15-minute pre-shift meeting. Once
26 a week, it required a 30-minute pre-shift meeting. However, Defendants would not pay Plaintiff
27 and other similarly-situated and aggrieved employees for the entirety of the 30 minutes; rather
28 they would pay Plaintiff and similarly-situated and aggrieved employees for only 15 minutes

1 despite working for the entirety of the pre-shift meeting and in excess of 15 minutes.

2 24. Plaintiff and similarly-situated and aggrieved employees remained under the
3 direction and control of the Defendants at all times during the pre-shift meetings. The time spent
4 attending the pre-shift meeting was compensable hours worked. Even though this time was
5 compensable hours worked, Defendants failed to pay Plaintiff and other similarly-situated and
6 aggrieved employees any wages for these hours worked. As a result, they failed to pay all
7 minimum and regular wages to similarly-situated and aggrieved employees and to the extent this
8 time was overtime, they failed to pay all applicable overtime wages.

9 25. During the Class Period, Plaintiff and other similarly-situated and aggrieved
10 employees were eligible to earn, and did earn, more than one hourly rate for non-overtime hours
11 during the same workweek and/or pay period.

12 26. During the Class Period, Plaintiff and other similarly-situated and aggrieved
13 employees were eligible to earn, and did earn, non-discretionary pay, including bonus
14 compensation and/or commissions.

15 27. During the same workweek and/or pay period, Plaintiff and each similarly-situated
16 and aggrieved employee regularly worked overtime hours exceeding 8 hours per day and/or 40
17 hours in one workweek and also earned more than one hourly rate for non-overtime hours, and
18 non-discretionary pay in addition to their hourly pay, including bonus compensation, and/or
19 commissions.

20 28. Plaintiff and each similarly-situated and aggrieved employee regularly worked
21 overtime hours exceeding 8 hours per day and/or 40 hours in one workweek, but were not paid at
22 the correct overtime rate of pay. Plaintiff and each similarly-situated and aggrieved employee
23 were not paid at the correct overtime rate of pay because all remuneration and non-discretionary
24 pay, including all hourly rates paid for non-overtime hours, all bonuses, and all commissions,
25 were not included in their regular rate of pay, as required by Labor Code sections 510 and 1194,
26 and section 3 of the applicable IWC wage order. Thus, the regular rate of pay was not properly
27 calculated for purposes of calculating the proper overtime payment. As a result, Defendants failed
28 to pay all overtime wages to Plaintiff and other similarly-situated and aggrieved employees.

1 29. During the Class Period, Defendants did not maintain a compliant meal period
2 policy applicable to Plaintiff and other similarly-situated and aggrieved employees, nor did they
3 inform their employees, including Plaintiff, that they were permitted to take meal periods as
4 provided under the California Labor Code.

5 30. During the Class Period, Plaintiff and other similarly-situated and aggrieved
6 employees were regularly not permitted to take off-duty meal periods of at least thirty minutes
7 and prior to the end of their fifth hour of work.

8 31. At times during the Class Period, Plaintiff and others similarly situated and
9 aggrieved were not permitted to leave the premises during any purported meal period and/or rest
10 period. As a result, these meal periods and rest periods were not compliant because Plaintiff and
11 others similarly situated and aggrieved were not relieved of all duties during any meal or rest
12 period.

13 32. Additionally, due to the demands of the work, and client orders, Plaintiff's and
14 other similarly situated and aggrieved employees' meal periods were often less than thirty
15 minutes, late, or completely missed. Plaintiff and others similarly situated and aggrieved were not
16 relieved of all duties in order to take a compliant meal period or were required to return to their
17 work prior to having taken a full thirty-minute meal period.

18 33. For the same reasons, Plaintiff and other similarly-situated and aggrieved
19 employees were also not provided an opportunity to take a second meal period when they worked
20 shifts greater than 10 hours.

21 34. During the Class Period, the Defendants, and each of them, required Plaintiff and
22 similarly-situated and aggrieved employees to work without providing statutory meal periods and
23 failed to pay similarly-situated and aggrieved employees an hour's pay in lieu thereof.

24 35. Defendants did not authorize and permit off-duty rest periods of at least ten
25 minutes for every four hours or major fraction thereof worked as required by law. During the
26 Class Period, Defendants did not maintain a compliant rest period policy applicable to Plaintiff
27 and other similarly-situated and aggrieved employees, nor did they inform their employees,
28 including Plaintiff, that they were permitted to take rest periods as provided under the California

1 Labor Code.

2 36. Plaintiff and other similarly-situated and aggrieved employees were not relieved
3 of all duty in order to take any rest periods. Instead, Plaintiff and other similarly-situated and
4 aggrieved employees were required to remain on-premises during any purported rest period. At
5 other times, due to the work load and client orders, Plaintiff and similarly-situated and aggrieved
6 employees were not permitted to take any rest period in order to meet the work demands of clients.
7 As a result, Plaintiff and other similarly-situated and aggrieved employees were not relieved of
8 all duties and were required to continue working without compliant rest periods.

9 37. During the Class Period, the Defendants, and each of them, required Plaintiff and
10 similarly-situated and aggrieved employees to work without taking statutory rest periods and
11 failed to pay similarly-situated and aggrieved employees an hour's pay in lieu thereof.

12 38. As a result of the failure to pay all minimum, regular, and overtime wages, as
13 described herein, Defendants further failed to pay Plaintiff and all other similarly-situated and
14 aggrieved employees timely during employment as required by Cal. Labor Code section 204.

15 39. During the Class Period, Defendants failed to record and maintain records of all
16 hours worked. Defendants did not accurately record the total hours worked daily and the
17 beginning and ending times of each work period, including meal periods, for Plaintiff and
18 similarly-situated and aggrieved employees.

19 40. During the applicable limitations period, the Defendants, by virtue of centralized
20 and uniform pay policies, failed to provide accurate, itemized wage statements to Plaintiff, and
21 similarly-situated and aggrieved employees, as required by Labor Code section 226.

22 41. Because of the failure to pay all wages as a result of the practices alleged herein,
23 the wage statements failed to provide all accurate information as required by the Labor Code
24 section 226 because they did not accurately state the total hours worked. The wage statements did
25 not accurately state the total hours worked, the net and gross wages earned, all applicable hourly
26 rates in effect during the pay period and the corresponding number of hours worked at each hourly
27 rate, and the inclusive dates of the pay period for which the employee was paid.

28 42. Independent of the claims asserted herein, the wage statements were not compliant

1 with Labor Code section 226. The wage statements were deficient because they did not clearly
2 state the total hours worked, or all applicable hourly rates and the number of hours worked at
3 each rate. The wage statements listed several different data units under the "hours" and when
4 added together, they did not equate to the total hours worked. The data reflecting the rates of pay
5 and each hour worked at each rate were further confusing, inaccurate, and not clearly stated on
6 each wage statement. Rather, employees were left with a confusing set of data from which they
7 could not accurately determine and understand their pay, let alone the total hours worked, all
8 applicable hourly rates in effect during the pay period and the corresponding number of hours
9 worked at each hourly rate. This information could not be determined from the face of the wage
10 statements alone.

11 43. This information required to be stated by law could not be determined from the
12 face of the wage statements alone. The failure to state this information deprived Plaintiff and
13 others similarly situated and aggrieved from being able to fully understand their hours worked,
14 their pay received, and the total amount of earnings owed or outstanding.

15 44. Defendants maintained a policy and practice of failing to pay all wages owed to
16 terminated employees within the requirements of Labor Code sections 201-202. Defendants
17 further maintained a policy and practice of failing to pay waiting time penalties pursuant to Cal.
18 Labor Code section 203 when they failed to comply with the requirements set forth in Sections
19 201-202.

20 45. Because of the failure to pay all wages as alleged herein, Defendants also failed to
21 pay all wages owed to their terminated employees within the time required by Sections 201-202.

22 46. At the time of separation from employment and as alleged herein, Plaintiff and
23 others similarly situated and aggrieved were owed and continue to be owed minimum wages,
24 regular wages, overtime wages, and meal and rest period premium wages from Defendants for all
25 hours worked.

26 47. As a result, Plaintiff and other similarly-situated and aggrieved employees are
27 owed waiting time penalties.

28 48. Defendants have engaged in unfair business practices in California and willingly

1 and knowingly have practiced, employed, and utilized the employment patterns and practices
2 alleged in this complaint in violation of Business & Professions Code sections 17200, *et seq.* in
3 an attempt to improperly lower the costs of doing business to gain an unfair economic advantage.

4 V.

5 **CLASS ACTION ALLEGATIONS**

6 49. Plaintiff brings this action on behalf of himself and all others similarly situated as
7 a class action pursuant to Code of Civil Procedure section 382. The members of the Plaintiff Class
8 are defined as follows:

9 All individuals employed by Defendants in the State of California as
10 hourly non-exempt employees at any time during the Class Period (the
"Class" or "Plaintiff Class").

11 50. Further, Plaintiff brings this action on behalf of himself and all other similarly-
12 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

13 Plaintiff Subclass One ("Minimum Wage Subclass"): All members of
14 the Plaintiff Class who, within the applicable limitations period, were
15 subject to a policy of not being compensated for all hours worked or
under Defendants' control at the applicable minimum wage.

16 51. Further, Plaintiff brings this action on behalf of himself and all other similarly-
17 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

18 Plaintiff Subclass Two ("Overtime Subclass"): All members of the
19 Plaintiff Class who, within the applicable limitations period, were subject
20 to a policy of not being compensated for all hours worked or under
Defendants' control in excess of eight hours per day and/or forty hours per
week at the applicable overtime wage.

21 52. Further, Plaintiff brings this action on behalf of himself and all other similarly-
22 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

23 Plaintiff Subclass Three ("Regular Rate of Pay Subclass"): All members
24 of the Plaintiff Class in the State of California who, within the applicable
25 limitations period, were subject to the policy and/or practice of failing to
include all non-discretionary incentive pay and/or bonus compensation
26 into the regular rate of pay for purposes of calculating overtime premium
pay.

27 53. Further, Plaintiff brings this action on behalf of himself and all other similarly-
28 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

1 Plaintiff Subclass Four ("First Meal Period Subclass"): All members of
2 the Plaintiff Class who, within the applicable limitations period, worked
3 a shift of five hours or more and were subject to the policy and/or practice
4 not to provide a compliant 30-minute meal period or one hour of pay at
5 the employee's regular rate of pay in lieu thereof.

6 54. Further, Plaintiff brings this action on behalf of himself and all other similarly-
7 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

8 Plaintiff Subclass Five ("Second Meal Period Subclass"): All members
9 of the Plaintiff Class who, within the applicable limitations period,
10 worked a shift of ten hours or more and were subject to the policy and/or
11 practice not to provide a compliant second 30-minute meal period or one
12 hour of pay at the employee's regular rate of pay in lieu thereof.

13 55. Further, Plaintiff brings this action on behalf of himself and all other similarly-
14 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

15 Plaintiff Subclass Six ("Rest Period Subclass"): All members of the
16 Plaintiff Class who, within the applicable limitations period, worked a
17 shift of 3.5 hours or more and were subject to the policy and/or practice
18 not to provide a compliant rest period for every 4 hours worked, or major
19 fraction thereof, or one hour of pay at the employee's regular rate of pay
20 in lieu thereof.

21 56. Further, Plaintiff brings this action on behalf of himself and all other similarly-
22 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

23 Plaintiff Subclass Seven ("Wage Statement Subclass"): All members of
24 the Plaintiff Class who, within the applicable limitations period, were
25 subject to the policy and/or practice of not providing accurate itemized
26 wage statements.

27 57. Further, Plaintiff brings this action on behalf of himself and all other similarly-
28 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

29 Plaintiff Subclass Eight ("Waiting Time Subclass"): All members of the
30 Plaintiff Class who, within the applicable limitations period, either
31 voluntarily or involuntarily separated from their employment, and were
32 subject to the Defendants' policy and/or practice of failing to timely pay
33 wages upon termination.

34 58. Further, Plaintiff brings this action on behalf of himself and all other similarly-
35 situated persons in a Subclass of the Plaintiff Class, which is defined as follows:

36 Plaintiff Subclass Nine ("The UCL Subclass"): All members of the
37 Plaintiff Class, within the applicable limitations period, who are owed
38 restitution as a result of Defendants' business acts and practices, to the
39 extent such acts and practices are found to be unlawful, deceptive, and/or

1 unfair.

2 59. Plaintiff reserves the right under California Rules of Court, Rule 3.765(b) and
3 other applicable law to amend or modify the class definition with respect to issues or in any other
4 ways. Plaintiff is the Named Representative and is a member of the Plaintiff Class. Plaintiff seeks
5 class-wide recovery based on the allegations set forth in this complaint. The Court can define the
6 Plaintiff Class and create additional subclasses as may be necessary or desirable to adjudicate
7 common issues and claims of the Plaintiff Class Members if, based on discovery of additional
8 facts, the need arises.

9 60. As set forth in the Prayer, below, Plaintiff will move the Court to try the UCL
10 Subclass Claims before the Court in Equity before trying the legal claims to a trier of fact in this
11 action. See, *Hoopes v. Dolan* (2008) 168 Cal.App.4th 146, 156-157; *Pellegrino v. Robert Half*
12 *Intern., Inc.* (2010) 181 Cal.App.4th 713 [“[B]etter practice” is for “the trial court [to] determine
13 the equitable issues before submitting the legal ones to the jury.”]. Same, *Hodge v. Superior Court*
14 (2006) 145 Cal.App.4th 278, 284 and *Nwosu v. Uba* (2004) 122 Cal.App.4th 1229, 1238, 1244.

15 61. This action has been brought and may be maintained as a class action pursuant to
16 Code of Civil Procedure section 382 because there is a well-defined community of interest in the
17 litigation and the proposed Plaintiff Class is easily ascertainable through the records Defendants
18 are required to keep.

19 62. Numerosity. The members of the Plaintiff Class are so numerous that individual
20 joinder of all of them as Plaintiff is impracticable. While the exact number of the Plaintiff Class
21 Members is unknown to Plaintiff at this time, Plaintiff is informed and believes and thereon
22 alleges that there are more than 100 Plaintiff Class Members.

23 63. Commonality. Common questions of law and fact exist as to all Plaintiff Class
24 Members and predominate over any questions that affect only individual members of the Plaintiff
25 Class. These common questions include, but are not limited to:

- 26 a. Did Defendants violate Labor Code sections 510, 1197, or 1194 by failing
27 to pay minimum, regular, and/or overtime wages for all hours worked,
28 including time subject to Defendants’ control?

- b. Did Defendants fail to pay all wages by failing to pay all overtime wages as a result of failing to properly calculate the regular rate of pay?
- c. Did Defendants violate Labor Code sections 201 and/or 202 by not paying Plaintiff Class Members who are no longer employed by Defendants all earned wages, including minimum, regular, and overtime wages, and upon their termination of employment? If so, were such violations “willful” within the meaning of Labor Code section 203?
- d. Whether Defendants violated Labor Code sections 512 and 226.7 by failing to provide compliant first and second meal periods, or pay one hour of pay in lieu thereof for each missed, untimely, or interrupted meal period?
- e. Whether Defendants violated Labor Code section 226.7 and section 11 of the applicable IWC Wage Order regarding meal periods?
- f. Whether Defendants violated Labor Code section 226.7 and section 12 of the applicable IWC Wage Order regarding rest periods?
- g. Whether Defendants engaged in business acts or practices which violate California’s Unfair Competition Law (“UCL”) as it relates to their policies and practices as to wages and pay?
- h. What are the effects and the extent of any injuries sustained by the Plaintiff Class and Plaintiff Subclass Members and appropriate type and/or measure of damages?
- i. What is the appropriateness and nature of relief to each Plaintiff Class and Subclass Member?
- j. What is the extent of liability of each Defendant, including DOE defendants, to each Plaintiff Class and Subclass Member?

64. Typicality. Plaintiff’s claims are typical of the claims of the other members of the Plaintiff Class. Plaintiff and other members of the Plaintiff Class were subject to the same policies and practices of Defendants resulting in underpayment for straight-time and overtime hours.

1 Defendants failed to provide accurate, itemized wage statements to Plaintiff and members of the
2 Plaintiff Class. Defendants did not provide for compliant meal or rest periods or pay premiums
3 in lieu thereof. Defendants also failed to pay all wages owed to Plaintiff and Plaintiff Class
4 Members upon termination of employment.

5 65. Adequacy. Plaintiff will adequately and fairly protect the interests of the members
6 of the Plaintiff Class. Plaintiff has no interest adverse to the interests of absent Plaintiff Class
7 Members. Plaintiff is represented by attorneys who have substantial class action experience in
8 wage-and-hour and class action law.

9 66. Superiority. A class action is superior to other available means for fair and
10 efficient adjudication of the claims of the Plaintiff Class and would be beneficial for the parties
11 and the Court. Class action treatment will allow a large number of similarly-situated persons to
12 prosecute their common claims in a single forum, simultaneously, efficiently, and without the
13 unnecessary duplication of effort and expense that numerous individual actions would require.
14 The damages suffered by each Plaintiff Class Member are relatively small in the sense pertinent
15 to class action analysis, and the expense and burden of individual litigation would make it
16 extremely difficult or impossible for the individual Plaintiff Class Members to seek and obtain
17 individual relief. A class action will serve an important public interest by permitting such
18 individuals to effectively pursue recovery of the sums owed to them. Further, class litigation
19 prevents the potential for inconsistent or contradictory judgments raised by individual litigation.

20 VI.

21 CAUSES OF ACTION

22 FIRST CAUSE OF ACTION

23 **FAILURE TO PAY MINIMUM AND REGULAR WAGES FOR ALL HOURS
WORKED**

24 **(Labor Code §§ 204, 1194, 1194.2, and 1197)**

25 **(On Behalf of Plaintiff and the Minimum Wage Subclass Against Each Defendant)**

26 67. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
herein.

27 68. Labor Code section 1197 states: "The minimum wage for employees fixed by the
28 commission is the minimum wage to be paid to employees, and the payment of a less wage than

1 minimum wage so fixed is unlawful.”

2 69. Labor Code section 1198 states: “The maximum hours of work and the standard
3 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
4 conditions of labor for employees. The employment of any employee for longer hours than those
5 fixed by the order or under conditions of labor prohibited by the order is unlawful.”

6 70. Section 4 of the applicable IWC Wage Order provides that an employer may not
7 pay employees less than the applicable minimum wage for all hours worked.

8 71. Labor Code section 1194 states: “Notwithstanding any agreement to work for a
9 lesser wage, any employee receiving less than the legal minimum wage or the legal overtime
10 compensation applicable to the employee is entitled to recover in a civil action the unpaid balance
11 of the full amount of his minimum wage or overtime compensation, including interest thereon,
12 reasonable attorney’s fees and costs of suit.”

13 72. As set forth herein, Defendants willfully breached their obligation and failed to
14 pay Plaintiff and Plaintiff Class Members and the Minimum Wage Subclass all minimum and
15 regular wages for all hours worked all in violation of Labor Code sections 1197 and 1198, and
16 the applicable Wage Order.

17 73. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff Class and
18 the Minimum Wage Subclass he seeks to represent have been deprived of minimum and regular
19 wages and/or other compensation in amounts to be determined at trial, and are entitled to recovery
20 of such amounts, plus interest thereon, liquidated damages in an amount equal to the wages
21 unlawfully unpaid, attorneys’ fees, and costs to the fullest extent permitted by law.

22 74. Plaintiff and the Plaintiff Class he seeks to represent request relief as described
23 below.

24 **SECOND CAUSE OF ACTION**
25 **FAILURE TO PAY OVERTIME WAGES**
26 **(Labor Code §§ 510 and 1194)**
27 **(On Behalf of Plaintiff and the Overtime and Regular Rate of Pay Subclasses**
28 **Against Each Defendant)**

75. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
herein.

1 76. Labor Code section 510 provides in pertinent part: "Eight hours of labor
2 constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess
3 of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in
4 any one workweek shall be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be
6 compensated at the rate of no less than twice the regular rate of pay for an employee. In addition,
7 any work in excess of eight hours on any seventh day of a workweek shall be compensated at the
8 rate of no less than twice the regular rate of pay of an employee."

9 77. Labor Code section 1198 states: "The maximum hours of work and the standard
10 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
11 conditions of labor for employees. The employment of any employee for longer hours than those
12 fixed by the order or under conditions of labor prohibited by the order is unlawful."

13 78. Section 3 of the applicable IWC Wage Order provides that an employer may not
14 pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

15 79. As set forth herein, Defendants willfully breached their obligations to pay Plaintiff
16 and Plaintiff Class Members all overtime wages for all overtime worked all in violation of Labor
17 Code sections 510, 1194, and 1198, and the applicable Wage Order.

18 80. As a result of the unlawful acts of Defendants, Plaintiff and the Plaintiff Class and
19 the Overtime and Regular Rate of Pay Subclasses he seeks to represent have been deprived of
20 overtime wages and/or other compensation in amounts to be determined at trial, and are entitled
21 to recovery of such amounts, plus interest thereon, attorneys' fees, and costs.

22 81. Plaintiff and the Plaintiff Class he seeks to represent request relief as described
23 below.

24 **THIRD CAUSE OF ACTION**

25 **FAILURE TO PROVIDE MEAL PERIODS OR PAY IN LIEU THEREOF**

26 **(Labor Code §§ 226.7 and 512)**

27 **(On Behalf of Plaintiff and the First and Second Meal Period Subclasses Against Each**
28 **Defendant)**

29 82. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
30 herein.

1 83. At all relevant times, Plaintiff and all other members of the Plaintiff Class were
2 employees of Defendants covered by Labor Code sections 226.7 and 512, and the applicable
3 Wage Order.

4 84. Labor Code section 226.7 provides as follows:

5 (b) An employer shall not require any employee to work during any meal
6 or rest... period mandated pursuant to... an applicable... order of the
Industrial Welfare Commission.

7 (c) If an employer fails to provide an employee a meal period or rest
8 period in accordance with an applicable order of the Industrial Welfare
9 Commission, the employer shall pay the employee one additional hour
of pay at the employee's regular rate of compensation for each work day
that the meal period or rest period is not provided.

10 85. Labor Code section 512(a) provides as follows:

11 An employer may not employ an employee for a work period of more than
12 five hours per day without providing the employee with a meal period of
not less than 30 minutes, except that if the total work period per day of the
13 employee is no more than six hours, the meal period may be waived by
mutual consent of both the employer and employee. An employer may not
14 employ an employee for a work period of more than 10 hours per day
without providing the employee with a second meal period of not less than
15 30 minutes, except that if the total hours worked is no more than 12 hours,
the second meal period may be waived by mutual consent of the employer
16 and the employee only if the first meal period was not waived.

17 86. Labor Code section 1198 states: "The maximum hours of work and the standard
18 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
19 conditions of labor for employees. The employment of any employee for longer hours than those
20 fixed by the order or under conditions of labor prohibited by the order is unlawful."

21 87. Section 11(A) of the applicable Wage Order provides, in pertinent part: "No
22 employer shall employ any person for a work period of more than five (5) hours without a meal
23 period of not less than 30 minutes..."

24 88. Section 11(B) of the applicable Wage Order provides, in pertinent part: "An
25 employer may not an employee for a work period of more than ten (10) hours per day without
26 providing the employee with a second meal period of not less than 30 minutes..."

27 89. As set forth herein, Defendants failed to provide members of the First and Second
28 Meal Period Subclasses with compliant meal periods as provided in Labor Code sections 226.7

1 and 512, and failed to pay them the additional pay at the employee's regular rate of compensation
2 for each work day in lieu of providing off-duty meal period(s).

3 90. Defendants' policies are non-compliant because, among other reasons, they fail to
4 state employees are entitled to a meal period when working five hours or more, and fail to state
5 that employees are entitled to a second meal period, or premium wages in lieu of a meal period,
6 after working periods of ten hours or more. Defendants' policies are non-compliant because they
7 do not provide duty-free and uninterrupted meal periods of at least thirty minutes. Defendants'
8 policies further failed to provide for premium wages in lieu of lawful meal periods.

9 91. As a result of Defendants' failure to comply with their obligations under Labor
10 Code sections 226.7 and 512, and the applicable Wage Order, Plaintiff and the other members of
11 the First and Second Meal Period Subclasses have suffered damages in an amount, subject to
12 proof, to the extent they were not paid additional pay owed for the Defendants' failure to provide
13 meal periods as required by law.

14 92. Plaintiff and the Plaintiff Class and First and Second Meal Period Subclasses he
15 seeks to represent are entitled to recover the full amount of their unpaid additional pay for
16 Defendants' failure to provide statutory meal periods as required by law. Pursuant to Labor Code
17 section 218.6, Plaintiff and other members of the First and Second Meal Period Subclasses are
18 entitled to recover prejudgment interest on the amount of the additional pay owed.

19 93. Plaintiff and the Plaintiff Class he seeks to represent request relief as described
20 below.

21 **FOURTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE MANDATED REST PERIODS**
23 **OR TO PAY ADDITIONAL WAGES IN LIEU THEREOF**
(Cal. Labor Code §§ 226.7 and 558; § 12 of the Applicable IWC Wage Order)
(On behalf of Plaintiff and the Rest Period Subclass Against Each Defendant)

24 94. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
25 herein.

26 95. At all relevant times, Plaintiff and all other members of the Plaintiff Class were
27 employees of Defendants covered by Labor Code section 226.7 and the applicable Wage Order.

28 ///

1 96. Labor Code section 226.7 provides as follows:

2 (b) An employer shall not require any employee to work during any meal
3 or rest... period mandated pursuant to... an applicable... order of the
4 Industrial Welfare Commission.

5 (c) If an employee fails to provide an employee a meal period or rest
6 period in accordance with an applicable order of the Industrial Welfare
7 Commission, the employer shall pay the employee one additional hour
8 of pay at the employee's regular rate of compensation for each work day
9 that the meal period or rest period is not provided.

10 97. Labor Code section 1198 states: "The maximum hours of work and the standard
11 conditions of labor fixed by the commission shall be the maximum hours of work and the standard
12 conditions of labor for employees. The employment of any employee for longer hours than those
13 fixed by the order or under conditions of labor prohibited by the order is unlawful."

14 98. Section 12(A) of the applicable Wage Order provides, in pertinent part:

15 "Every employer shall authorize and permit all employees to take rest
16 periods, which insofar as practicable shall be in the middle of each work
17 period. The authorized rest period time shall be based on the total hours
18 worked daily at the rate of ten (10) minutes net rest time per four (4)
19 hours or major fraction thereof. However, a rest period need not be
20 authorized for employees whose total daily work time is less than three
21 and one-half (3 1/2) hours. Authorized rest period time shall be counted
22 as hours worked for which there shall be no deduction from wages.

23 99. Section 12(B) of the applicable wage order provides, in pertinent part: "If an
24 employer fails to provide an employee a rest period in accordance with the applicable provisions
25 of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular
26 rate of compensation for each workday that the rest period is not provided."

27 100. As set forth herein, Defendants failed to provide members of the Rest Period
28 Subclass with compliant rest periods as provided in Labor Code section 226.7 and failed to pay
29 them the additional pay at the employee's regular rate of compensation for each work day in lieu
30 of providing timely, off-duty rest period(s). Defendants' policies are non-compliant because,
31 among other reasons, they fail to state employees are entitled to timely off-duty paid rest periods
32 of at least ten minutes as required by law. Defendants' policies further required their employees
33 to remain on duty during a part or all of the rest period. Defendants' policies further failed to
34 provide for premium wages in lieu of lawful rest periods.

101. As a result of Defendants' failure to comply with their obligations under Labor Code section 226.7 and the applicable Wage Order, Plaintiff and the other members of the Rest Period Subclass have suffered damages in an amount, subject to proof, to the extent they were not paid additional pay owed for the Defendants' failure to provide rest periods as required by the law.

102. At all times, Defendants engaged Plaintiff without having any policy to provide compliant rest periods in the manner required by law, nor did the Defendants provide one hour of pay in lieu of non-compliant rest periods.

103. Plaintiff and the Plaintiff Class and Rest Period Subclass he seeks to represent are entitled to recover the full amount of their unpaid additional pay for Defendants' failure to provide statutory rest periods as required by law. Pursuant to Labor Code section 218.6, Plaintiff and other members of the Rest Period Subclass are entitled to recover prejudgment interest on the amount of the additional pay owed.

104. Plaintiff and the Plaintiff Class he seeks to represent request relief as described below.

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

(Labor Code §§ 226 and 1174)

(On Behalf of Plaintiff and the Wage Statement Subclass Against Each Defendant)

105. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

106. Labor Code section 226, subdivision (a) requires Defendants to itemize in wage statements all deductions from payment of wages and to accurately report total hours worked by Plaintiff and members of the Plaintiff Class. Defendants have knowingly and intentionally failed to comply with Labor Code section 226, subdivision (a) on each and every wage statement that should have been provided to Plaintiff and members of the Plaintiff Class.

107. Labor Code section 1174 requires Defendants to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by, and the wages paid to,

1 their employees. Defendants have knowingly and intentionally failed to comply with Labor Code
2 section 1174.

3 108. Section 7 of the applicable Wage Order requires Defendants to maintain time
4 records showing, including but not limited to, when the employee begins and ends each work
5 period, meal periods, split shift intervals and total daily hours worked in itemized wage
6 statements, and must show all deductions from payment of wages, and accurately report total
7 hours worked by Plaintiff and members of the Plaintiff Class.

8 109. As set forth herein, Defendants failed provide accurate itemized wage statements
9 reflecting all of the required information, including but not limited to gross wages earned, net
10 wages earned, the name and address of the employer, the total hours worked, all applicable rates
11 of pay and the total number of hours worked at each rate, and the inclusive dates of the pay period,
12 all in violation of Labor Code section 226. This information could not be readily determined from
13 the face of the wage statements alone.

14 110. Plaintiff and members of the Wage Statement Subclass suffered injuries as a result
15 of Defendants' intentional and knowing failure to provide to Plaintiff and the Plaintiff Class
16 Members accurate wage statements and to maintain the writings required by Labor Code section
17 226(a).

18 111. As a result of the unlawful acts of Defendants, Plaintiff and members of the Wage
19 Statement Subclass have suffered and continue to suffer substantial injuries, losses, and actual
20 damages related to Defendants' violations, including lost wages, lost interest on such wages, and
21 expense and attorney's fees in seeking to compel Defendants to fully perform their obligations.

22 112. Accordingly, Plaintiff and the Plaintiff Class and Wage Statement Subclass he
23 seeks to represent request relief as described below, including statutory penalties up to the
24 maximum amount as permitted by law.

25 **SIXTH CAUSE OF ACTION**
26 **FAILURE TO PAY WAGES OWED AT TERMINATION**
27 **(Labor Code §§ 201-203)**
28 **(On Behalf of Plaintiff and the Waiting Time Subclass Against Each Defendant)**

113. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full

1 herein.

2 114. Labor Code sections 201 and 202 require Defendants to pay employees all wages
3 due no later than 72 hours after resignation from employment, or immediately in the case of
4 discharge by the employer. Labor Code section 203 provides that if an employer willfully fails to
5 timely pay such wages, then the employer must, as a penalty, continue to pay the subject
6 employees' wages until the back wages are paid in full or an action is commenced. The penalty
7 cannot exceed 30 days of wages.

8 115. Defendants willfully failed to timely pay wages to employees who were
9 voluntarily and/or involuntarily terminated from their employment within the time requirements
10 set forth in Cal. Labor Code sections 201-202. Plaintiff is informed and believes that Defendants'
11 pay practices are continuing such that current employees are not being timely paid wages as they
12 work in violation of law.

13 116. More than 30 days have passed since Plaintiff and members of the Waiting Time
14 Subclass have left Defendants' employ.

15 117. As set forth herein, Plaintiff and the proposed Waiting Time Subclass are entitled
16 to compensation for unpaid minimum, regular, and overtime wages, and premium wages for non-
17 compliant meal and rest periods but to date have not received such compensation.

18 118. As a consequence of Defendants' willful conduct in not paying wages owed,
19 certain members of the Plaintiff Class are entitled to 30 days' wages as a penalty under Labor
20 Code section 203 for failure to pay legal wages, with interest and attorneys' fees and costs.

21 119. Accordingly, Plaintiff and the Plaintiff Class and Waiting Time Subclass he seeks
22 to represent request relief as described below, including statutory penalties up to the maximum
23 amount as permitted by law.

24 **SEVENTH CAUSE OF ACTION**
25 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**
26 **(Business and Professions Code §§ 17200, *et seq.*)**
(On Behalf of Plaintiff and the UCL Subclass Against Each Defendant)

27 120. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
28 herein.

1 121. The failure to pay minimum, regular, and overtime wages, and meal and rest
2 period premiums caused by Defendants' systematic and routine conduct constituted unlawful,
3 deceptive, and unfair business acts and/or practices within the meaning of Business and
4 Professions Code sections 17200, *et seq.*, including but not limited to a violation of the applicable
5 State of California Industrial Welfare Commission Wage Orders, regulations, and statutes, or is
6 a practice which is otherwise unfair, deceptive, and unlawful.

7 122. This cause of action is brought under Business and Professions Code sections
8 17203 and 17204, commonly called the Unfair Competition Law. Under this cause of action and
9 pursuant to Business and Professions Code section 17208, Plaintiff and members of the proposed
10 UCL Subclass seek restitution of premium wages and other pay owed, where such wages were
11 due during the Class Period, according to proof.

12 123. This cause of action is brought as a cumulative remedy as provided in Business
13 and Professions Code section 17205, and is intended as an alternative remedy for restitution for
14 Plaintiff, the "Minimum Wage Subclass," the "Overtime Subclass," the "Regular Rate of Pay
15 Subclass," the "First Meal Period Subclass," the "Second Meal Period Subclass," and the "Rest
16 Period Subclass," for any portion of time commencing within three (3) years before filing this
17 complaint, and as the primary remedy for Plaintiff, and aforementioned Subclasses for any
18 portion of time during the *fourth year* before filing this Complaint, as this period of time exceeds
19 the general three-year statute of limitations on statutory wage claims, and is a basis for restitution
20 for all wage claims on an equitable basis and subject to court adjudication.

21 124. As a result of Defendants' unlawful and unfair business practice of failing to pay
22 minimum, regular, and overtime wages for all applicable hours worked, failing to pay premium
23 wages for non-compliant meal and rest periods, the failure to provide all meal and rest periods as
24 a matter of policy, and upon termination of employment, Plaintiff and each member of the
25 proposed "Minimum Wage Subclass," the "Overtime Subclass," the "Regular Rate of Pay
26 Subclass," the "First Meal Period Subclass," the "Second Meal Period Subclass," and/or the "Rest
27 Period Subclass," have suffered damages and are entitled to restitution in an amount according to
28 proof for a time period of four years prior to the filing of this Complaint and until such time as

1 (1) Defendants cease their unlawful business practices, (2) the commencement of trial, and/or (3)
2 a date otherwise determined by the Court pursuant to the laws of California.

3 125. Plaintiff, on behalf of himself and the proposed UCL Subclass, requests the
4 violations of each Defendant be enjoined, and other equitable relief provided, as this court deems
5 proper, including an order requiring Defendants to make tax contributions on the accrued wages
6 in the form of FICA, Social Security, Medicare, Unemployment Insurance, or other appropriate
7 payments. Defendants' conduct, business acts, and practices undermined competition and were
8 done in order to avoid costs other lawful employers comply with in order to avoid payment of
9 full compensation, wages, and statutory penalties owed.

10 126. Plaintiff and the members of the UCL Subclass he seeks to represent request relief
11 as described below, including restitution owed, in an amount according to proof, and for
12 reasonable costs of suit and reasonable attorney's fees as provided by the Labor Code, Code of
13 Civil Procedure section 1021.5, or other applicable law.

14 **EIGHTH CAUSE OF ACTION**

15 **PAGA Penalties for Failure to Pay Minimum, Regular, and Overtime Wages in Violation**
16 **of Labor Code §§ 510, 1194, 1197, 1198 and the Applicable IWC Wage Order**
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

17 127. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
18 herein.

19 128. Labor Code section 2699(a) provides: "Notwithstanding any other provision of
20 Law, any provision of this code that provides for a civil penalty to be assessed and collected by
21 the Labor and Workforce Development Agency or any of its departments, divisions,
22 commissions, boards, agencies, or employees, for violation of this code, may, as an alternative,
23 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
24 herself and other current and former employees pursuant to the procedures specified in Section
25 2699.3."

26 129. Labor Code section 2699(f)(2) states: "For all provisions of this code except those
27 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
28 of these provisions, as follows... (2) If, at the time of the alleged violation, the person employs

one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.”

130. At all relevant times and as set forth herein Defendants failed to pay all minimum, regular, and overtime wages for all applicable hours of work, including all time spent in pre-shift meetings.

131. Defendants failed to pay all overtime wages because Defendants failed to properly calculate the regular rate of pay for purposes of calculating overtime rates. Specifically, Defendants failed to include all base hourly rates earned by employees in the same workweek and other non-discretionary pay, including shift differentials, incentive pay, and flat sum bonuses in the regular rate of pay. As a result, the overtime wages were improperly calculated and Plaintiff and other similarly-situated and aggrieved employees were not paid all overtime wages owed.

132. Defendants’ conduct violates Labor Code sections 510, 1194, 1197, and 1198 as well as the “Hours and Days of Work” and “Minimum Wages” sections of the applicable wage order.

133. As a result, Defendants violated the Labor Code and are liable to Plaintiff, and other aggrieved employees, for penalties as required by Labor Code sections 558(a)(1)-(2), 1197.1, and 2699(a), or, in the alternative, section 2699(f)(2), as well as attorney’s fees and costs, all recoverable in an amount according to proof.

134. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

NINTH CAUSE OF ACTION

PAGA Penalties for Failure to Provide Meal Periods in Violation of Labor Code §§ 226.7, 512, 558, and 1198, and the Applicable IWC Wage Order (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

135. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full

1 herein.

2 136. Labor Code sections 2699(a) and 2699(f) provide for the assessment and
3 collection of civil penalties for violations of the labor code, to be recovered through a civil action
4 brought by an aggrieved employee on behalf of himself or herself and other current or former
5 employees pursuant to the procedures specified in Section 2699.3.

6 137. As alleged herein, Plaintiff and other aggrieved employees were not provided an
7 opportunity to take off-duty, timely, uninterrupted meal periods lasting at least 30 minutes. If
8 they were provided a "meal period," Plaintiff and other aggrieved employees' meal periods were
9 on duty, late, interrupted or shorter than thirty minutes. Plaintiff and other aggrieved employees
10 were not relieved of all duties during meal periods because they were required to remain on
11 premises, and therefore on duty, at all times. Sometimes, Plaintiff and other aggrieved employees'
12 meal periods would be interrupted due to a last-minute orders or others demands related to work
13 production.

14 138. Despite Plaintiff and other aggrieved employees not being provided with
15 compliant meal periods, Defendant failed to provide meal period premium pay for each day that
16 a meal period was not provided.

17 139. Defendants' conduct violates Labor Code sections 226.7, 512, and 1198, as well
18 as the "Meal Periods" section of the applicable IWC Wage Order. As a result, Plaintiff is entitled
19 to recover civil penalties and pursuant to Labor Code sections 558(a)(1)-(2) and 2699(a), or, in
20 the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an
21 amount according to proof.

22 140. Plaintiff, as a representative of the general public, will and does seek to recover
23 any and all penalties for each and every violation, in an amount according to proof, as to those
24 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
25 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
26 California.

27 ///

28 ///

TENTH CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Rest Periods in Violation of Labor Code §§ 226.7 and 558, and the Applicable IWC Wage Order
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

141. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

142. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of civil penalties for violations of the labor code, to be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

143. As alleged herein, Plaintiff and other aggrieved employees were not informed of their right to take rest periods and were not authorized and permitted to take off-duty rest periods of at least 10 minutes.

144. Despite Plaintiff and other aggrieved employees not being provided with compliant rest periods, Defendant failed to provide rest period premium pay for each day that a rest period was not provided.

145. Defendants violated Labor Code sections 226.7 and 1198 as well as the "Rest Periods" section of the applicable Wage Order and are liable to Plaintiff and other aggrieved employees for penalties as required by California Labor Code section 2699(a), or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all recoverable in an amount according to proof.

146. Plaintiff, as a representative of the general public, will and does seek to recover any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

ELEVENTH CAUSE OF ACTION

**PAGA Penalties for Failure to Provide Accurate Itemized Wage Statements in Violation of Labor Code § 226 and the Applicable IWC Wage Order
(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

147. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full

1 herein.

2 148. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
3 civil penalties for violations of the labor code, to be recovered through a civil action brought by
4 an aggrieved employee on behalf of himself or herself and other current or former employees
5 pursuant to the procedures specified in Section 2699.3.

6 149. Labor Code section 226.3 provides for civil penalties for violations of Labor Code
7 section 226. The civil penalty is \$250 for the initial violation and \$1000 for each subsequent
8 violation.

9 150. As alleged herein, Defendants failed to provide accurate itemized wage statements
10 to Plaintiff and other aggrieved employees. Because, as described above, the Defendants failed
11 to pay all, minimum, regular, and overtime wages and all meal and rest period premium wages,
12 the paystubs provided to Plaintiff and other aggrieved employees failed to accurately set forth the
13 total gross wages earned, net wages earned, total hours, worked, and all applicable hourly rates
14 and the total number of hours worked.

15 151. Additionally, separate and independent from the claims for derivative violations
16 of Section 226, the wage statements provided by Defendants were non-compliant. The wage
17 statements did not state the total hours worked. This item of information, required by code, could
18 not be ascertained from the face of the wage statement alone. Instead, the wage statement listed
19 several different data units under the "hours" and when added together, they did not equate to the
20 total hours worked. Rather, Plaintiff and other aggrieved employees were left with a confusing
21 set of data from which they could not accurately determine and understand their pay, let alone the
22 total hours worked.

23 152. Defendants' conduct violates Labor Code section 226.

24 153. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff
25 and other aggrieved employees for civil penalties as required by Labor Code sections 226.3 and
26 2699(a) or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all
27 recoverable in an amount according to proof.

28 154. Plaintiff, as a representative of the general public, will and does seek to recover

any and all penalties for each and every violation, in an amount according to proof, as to those penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of California.

TWELFTH CAUSE OF ACTION

PAGA Penalties for Failure to Pay All Wages Owed During and Upon Termination of Employment in Violation of Labor Code §§ 201-203 and 204 (On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)

155. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full herein.

156. Labor Code section 204(a) states, in pertinent part: "All wages...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Section 204(d) states: "The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." The "Minimum Wages" Section of the applicable Wage Order further states: "Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

157. Labor Code section 210(a) provides: "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld."

158. Labor Code section 256 states that a civil penalty shall be imposed "in an amount not exceeding 30 days' pay as waiting time under the terms of Section 203."

159. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of

1 civil penalties for violations of the labor code, to be recovered through a civil action brought by
2 an aggrieved employee on behalf of himself or herself and other current or former employees
3 pursuant to the procedures specified in Section 2699.3.

4 160. As set forth herein, Defendants failed to pay Plaintiff and other aggrieved
5 employees all wages within the time set forth in Labor Code section 204 due to the failure to pay
6 all minimum, regular, and overtime wages, and all meal and rest period premium wages.

7 161. Additionally, Defendants failed to pay Plaintiff and other aggrieved employees all
8 final wages earned within the time required by Labor Code sections 201-202. Defendants also
9 failed to pay waiting time penalty wages for failing to timely pay final wages. Even when
10 Defendants did pay final wages within the time frame required, Defendants nevertheless failed to
11 pay timely because they did not pay all wages earned as set forth herein.

12 162. Defendants also failed to pay a day's wages for every day final pay was not paid
13 through the date final wages were paid, as required by Labor Code section 203.

14 163. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff
15 and other aggrieved employees for penalties as required by Labor Code sections 210, 256, and
16 2699(a), or, in the alternative, section 2699(f)(2), as well as attorney's fees and costs, all
17 recoverable in an amount according to proof.

18 164. Plaintiff, as a representative of the general public, will and does seek to recover
19 any and all penalties for each and every violation, in an amount according to proof, as to those
20 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
21 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
22 California.

23 **THIRTEENTH CAUSE OF ACTION**

24 **PAGA Penalties for Failure to Maintain Accurate Records in Violation of Labor Code**
25 **§§ 1174 and 1198**

26 **(On Behalf of Plaintiff and each Aggrieved Employee Against All Defendants)**

27 165. Plaintiff incorporates and re-alleges the preceding paragraphs as if set forth in full
28 herein.

166. Labor Code section 1174(d) requires each employer to "[k]eep, at a central

1 location in the state or at the plants or establishments at which employees are employed, payroll
2 records showing the hours worked daily by and the wages paid to, and the number of piece-rate
3 units earned by and any applicable piece rate paid to, employees employed at the respective plants
4 or establishments.”

5 167. The “Records” section of the applicable IWC Wage Order requires each employer
6 to maintain “[t]ime records showing when the employee begins and ends each work period. Meal
7 periods, split shift intervals and total daily hours worked shall also be recorded.”

8 168. Labor Code section 1174.5 imposes a \$500 civil penalty for any failure to maintain
9 records required by Section 1174(d).

10 169. Labor Code sections 2699(a) and 2699(f) provide for assessment and collection of
11 civil penalties for violations of the labor code, to be recovered through a civil action brought by
12 an aggrieved employee on behalf of himself or herself and other current or former employees
13 pursuant to the procedures specified in Section 2699.3.

14 170. Defendants failed to maintain all records as required by law.

15 171. As a result, Defendants willfully violated the Labor Code and are liable to Plaintiff
16 and other aggrieved employees for penalties as required by Labor Code sections 1174.5 and
17 2699(a), or, in the alternative, 2699(f)(2), as well as attorney’s fees and costs, all recoverable in
18 an amount according to proof.

19 172. Plaintiff, as a representative of the general public, will and does seek to recover
20 any and all penalties for each and every violation, in an amount according to proof, as to those
21 penalties available pursuant to the PAGA. Funds recovered will be distributed in accordance with
22 the PAGA, with 75% of penalties recovered provided to the LWDA on behalf of the State of
23 California.

24 **VII.**

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff HUMBERTO CASTREJON, JR., on behalf of himself and all
27 other similarly-situated and aggrieved employees, prays for judgment as follows:

28 a. For certification of this action as a class action pursuant to Code of Civil

1 Procedure section 382;

2 b. For appointment of Plaintiff as the representative of the Plaintiff Class and
3 Subclasses;

4 c. For appointment of counsel for Plaintiff as Class Counsel;

5 d. For an order bifurcating the action into liability and damages stages, or as
6 otherwise efficient for the administration of justice;

7 e. On the First and Second Causes of Action, for unpaid minimum wages and/or
8 overtime wages as required by Labor Code sections 1194-1197 in an amount according to proof;

9 f. On the First and Second Causes of Action, for unpaid regular wages at the
10 minimum, regular rate of pay, and/or overtime wages as required by Labor Code sections 1194-
11 1197 for each "Minimum Wage," "Overtime Wage" and "Regular Rate of Pay" Subclass
12 Member, in an amount according to proof;

13 g. On the First and Second Causes of Action, for liquidated damages under Labor
14 Code section 1194.2 for each "Minimum Wage," "Overtime Wage," and "Regular Rate of Pay"
15 Subclass Member for unpaid minimum wages under Labor Code section 1194;

16 h. On the Third Cause of Action for unpaid Premium Wages for non-compliant meal
17 periods at one hour of regular rate of pay to each "First Meal Period" and "Second Meal Period"
18 Subclass Member pursuant to Labor Code sections 226.7 and 512, and Section 11 of the
19 applicable Wage Order;

20 i. On the Fourth Cause of Action for unpaid Premium Wages for non-compliant rest
21 periods at one hour of regular rate of pay to each "Rest Period" Subclass Member pursuant to
22 Labor Code section 226.7 and Section 12 of the applicable Wage Order;

23 j. On the Fifth Cause of Action for statutory damages and penalties under Labor
24 Code sections 226(e) and (g), to the extent provided by law, up to a maximum of \$4,000.00 per
25 "Wage Statement" Subclass Member, in an amount according to proof;

26 k. On the Sixth Cause of Action, for statutory damages of up to 30 days of pay at the
27 regular rate of pay for failing to timely remit payment of wages to former employees in the
28 "Waiting Time Subclass" pursuant to Labor Code sections 201-203, in an amount according to

1 proof;

2 l. On the Seventh Cause of Action, for the UCL Subclass, to recover all restitution
3 for minimum, regular, and overtime wages, meal and rest period premiums, and any other form
4 of wages that were not paid, to members of the UCL Subclass during the Class Period as a result
5 of conduct of all Defendants. Said restitution may be calculated in accordance with California
6 Business and Professions Code sections 17203 and 17204, including trial of UCL claims by the
7 Court in equity before legal claims, in an amount according to proof;

8 m. For all unpaid meal period premiums as permitted by Labor Code sections 226.7,
9 512, 558, and 558.1, and Section 11 of the applicable Wage Order, in an amount according to
10 proof;

11 n. For all unpaid rest period premiums as permitted by Labor Code sections 226.7,
12 558, and 558.1, and Section 12 of the applicable Wage Order, in an amount according to proof;

13 o. For restitution of wages and liquidated damages under Labor Code sections 1194,
14 1194.2, and 1197 in an amount to be assessed and according to proof;

15 p. For maintenance of this claim as a Representative Action under the PAGA, and
16 providing Plaintiff and his counsel with all enforcement capability as if this action had been
17 instituted by the Department of Labor Standards Enforcement ("DLSE");

18 q. For recovery of civil penalties as permitted by Labor Code sections 2699.3,
19 1197.1, and 558(a)(1)-(2) in an amount according to proof;

20 r. For recovery of civil penalties as permitted by Labor Code section 226.3 for failing
21 to provide accurate itemized wage statements, in an amount to be assessed and according to proof;

22 s. For recovery of civil penalties as permitted by Labor Code sections 210 for failing
23 to pay wages timely during employment

24 t. For recovery of civil penalties as permitted by Labor Code section 256 for failing
25 to timely pay wages upon termination of employment;

26 u. For recovery of civil penalties as permitted by Labor Code sections 1174 and
27 1174.5 for failing to maintain records;

28 v. For recovery of civil penalties as permitted by Labor Code section 2699(f)(2)

1 where a statutory civil penalty is not provided, including but not limited to failing to comply with
2 Labor Code sections 201-203, 226.7, and 432.5;

3 w. For Pre-Judgment and Post-Judgment interest, to the extent permitted by law as to
4 any restitution recovery;

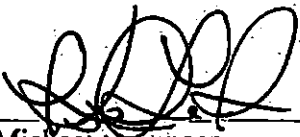
5 x. For Attorneys' fees and costs of suit, including expert fees and fees pursuant to
6 California Labor Code sections 218.5, 226(e), 1194, 2698, *et seq.*, and/or Code of Civil Procedure
7 section 1021.5 on a public benefit theory; and all other applicable state laws;

8 y. For injunctive relief; and

9 z. Such other legal equitable relief as this Court deems necessary, just, equitable and
10 proper.

11 COHELAN KHOURY & SINGER

12
13 Dated: June 25, 2020

By: 

Michael D. Singer
Kristina De La Rosa

15 Counsel for Plaintiff HUMBERTO CASTREJON, JR.

16
17 **VIII.**

18 **DEMAND FOR JURY TRIAL**

19 Plaintiff demands a jury trial of all claims triable as of right by jury.

20 COHELAN KHOURY & SINGER

21
22 Dated: June 25, 2020

By: 

Michael D. Singer
Kristina De La Rosa

24 Counsel for Plaintiff HUMBERTO CASTREJON, JR.

EXHIBIT A

COHELAN KHOURY & SINGER

A PARTNERSHIP OF PROFESSIONAL LAW CORPORATIONS

TIMOTHY D. COHELAN, APLC*
ISAM C. KHOURY, APC
DIANA M. KHOURY, APC
MICHAEL D. SINGER, APLC*

(* Also admitted in the District of Columbia)
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JEFF GERACI
J. JASON HILL†
MARTA MANUS
KRISTINA DE LA ROSA

(† Also admitted in Illinois)

April 20, 2020

NOTICE VIA ONLINE SUBMISSION

California Labor and Workforce Development Agency

VIA CERTIFIED MAIL (RETURN RECEIPT)

Westrock Services, LLC
1000 Abernathy Road NE
Atlanta, GA 30328

Westrock Services, LLC
c/o CSC-Lawyers Incorporating Service
2710 Gateway Oaks Dr., Suite 150N
Sacramento, CA 95833

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

This letter shall serve as Humberto Castrejon, Jr.'s (hereafter "Claimant") *Notice* pursuant to the California Private Attorneys General Act ("PAGA"), California Labor Code sections 2698, *et seq.*, regarding his wage and hour claims against WestRock Services, LLC (referred to herein as "the Employer."). Claimant submits this notice on behalf of himself and all current and former exempt and/or non-exempt employees in California (including but not limited to all employees working in the Corrugator and/or Operations/Manufacturing Departments and roll clamp operators) who during the one year preceding the date of this notice suffered one or more of the violations described herein (collectively referred to as "aggrieved employees").

Claimant and other aggrieved employees were subject to the same policies and practices alleged herein which impermissibly denied aggrieved employees their rights pursuant to the California Labor Code and caused violation of the Labor Code as set forth below.

FACTUAL ALLEGATIONS

Claimant worked for the Employer as a roll clamp operator from approximately 2002 until approximately May 24, 2019. At all relevant times at least one year prior to the date of this Notice, the Employer subjected Claimant and aggrieved employees to policies and practices which caused the violations of the Labor Code as described herein.

The Employer failed to pay Claimant and aggrieved employees all minimum, regular, and overtime wages for all applicable hours of work. The Employer required its employees to attend a weekly pre-shift work meeting, but failed to pay all wages for all of this time spent working and under the direction and control of the Employer. For example, the Employer required a daily 15-minute pre-shift meeting. Once a week, it required a 30-minute pre-shift meeting. However, the Employer would not pay Claimant and other aggrieved employees for the entirety of the 30 minutes; rather it would pay Claimant and aggrieved employees only 15 minutes despite working for at least 30 minutes.

The Employer failed to pay all overtime wages for all overtime hours worked because it failed to properly calculate the regular rate of pay for purposes of calculating overtime rates (time and a half- and double-time rates). Claimant and other aggrieved employees were eligible to earn, and did earn, more than one base hourly rates in the same workweek and other non-discretionary compensation, including non-discretionary shift differentials, incentive pay, and flat sum bonuses. Claimant and aggrieved employees worked overtime during the same workweek in which they worked at more than one base hourly rate and/or earned additional nondiscretionary compensation. However, all remuneration was not properly calculated into the regular rate of pay and as a result the overtime wages were not calculated using the correct regular rate of pay. Accordingly, the Employer failed to pay all overtime wages.

The Employer subjected all aggrieved employees to policies and practices which failed to provide compliant meal and rest periods. The Employer did not maintain a meal and rest period policy applicable to Claimant and other aggrieved employees. Claimant and other aggrieved employees were not authorized and permitted to take lawful rest and meal periods.

During a portion of the liability period, Claimant and other aggrieved employees were not permitted to leave the premises in order to take their meal and rest periods.

Claimants and other aggrieved employees were not provided an opportunity for each shift to take off-duty, timely, uninterrupted meal periods lasting at least 30 minutes. If they were provided a "meal period," Claimant and other aggrieved employees' meal periods were on duty, late, interrupted, and/or shorter than thirty minutes. Claimant and other aggrieved employees were not relieved of all duties during meal periods because they were required to remain on premises, and therefore on duty, at all times. Sometimes, Claimant and other aggrieved employees' meal periods would be interrupted due to a last-minute order, or other demands related to work production. Even though the meal periods were interrupted and/or less than 30 minutes, Claimant and others' aggrieved would not be afforded another opportunity to take a compliant meal period, nor were they provided a meal period premium pay. For the same reasons, Claimant and other aggrieved employees were not provided an opportunity to take a second uninterrupted, off-duty, thirty-minute meal period on shifts lasting more than 10 hours.

Claimant and other aggrieved employees were not informed of their right to take rest periods and they were not authorized or permitted to take off-duty rest periods of at least 10 minutes. The Employer never paid one hour of wages at a regular rate of pay for non-compliant rest and meal periods, as required by Labor Code sections 226.7 and 512, and Wage Order 5, sections 11 and 12.

The Employer failed to provide wage statements to Claimant and other aggrieved employees. The paystubs provided to Claimant and other aggrieved employees did not contain all accurate information as required by Labor Code section 226(e). Because, as described above, the Employer failed to pay all minimum, regular, and/or overtime wages and all meal and rest premium wages, it failed to accurately set forth the total gross wages earned, net wages earned, total hours worked, and all applicable hourly rates and the total number of hours worked.

Additionally, separate and independent from the claims for derivative violations of Section 226, the wage statements were non-compliant. The wage statements did not state the total hours

of work worked. This item of information, required by code, could not be ascertained from the face of the wage statement alone. Instead, the wage statement listed several different data units under the "hours" and when added together, they did not equate to the total hours worked. Rather, employees were left with a confusing set of data from which they could not accurately determine and understand their pay, let alone the total hours worked.

During his employment, Claimant was not paid all wages within the time set forth in Labor Code section 204 due to the failure to pay all minimum, regular, and overtime wages, and all meal and rest period premium wages as described herein.

Additionally, the Employer failed to pay Claimant and aggrieved employees within the time required because it did not pay all wages earned as set forth herein. Claimant is informed and believes that the Employer has no policy and/or practice to comply with Labor Code sections 201, 202, and 203 as to all separated employees in California by timely paying final wages and paying waiting time penalty wages when failing to timely pay final wages. On information and belief, Claimant maintains that the Employer maintained a regular practice of failing to pay separated employees within the time requirements of Labor Code sections 201- 202. Even if it did provide employees with the final pay check within the time frame required, it nevertheless failed to pay timely because it did not pay all wages earned as set forth herein. As a result, the Employer is liable for civil penalties for its violation of Sections 202, 201.2, 202, and 201.5.

The Employer also did not pay a day's wages for every day final pay was not paid through the date final wages were paid, as required by Labor Code section 203. Thus, aggrieved employees are owed civil penalties due to the Employer's violation of Cal. Labor Code 203.

FAILURE TO PAY MINIMUM, REGULAR, AND OVERTIME WAGES
(Labor Code §§ 226.2, 510, 1194, 1197, 1197.1, and 1198, and the "Minimum Wages" and "Hours and Days of Work" Sections of the Applicable Wage Order)

The Employer failed to pay all minimum, regular, and overtime wages required by law.

Labor Code section 510 provides in pertinent part: "Eight hours of labor constitutes a day's work. Any work in excess of 8 hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee."

Labor Code section 1197 states: "The minimum wage for employees fixed by the commission or by any applicable state or local law, is the minimum wage to be paid to employees, and the payment of a less wage than minimum wage so fixed is unlawful. This section does not change the applicability of local minimum wage laws to any entity."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions

of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”

Pursuant to the “Minimum Wages” and “Hours & Days of Work” Sections of the applicable Wage Order, an employer may not pay employees less than the applicable minimum wage for all hours worked, and provides that an employer may not pay non-exempt employees less than the applicable overtime rate for all overtime hours worked.

Pursuant to the “Reporting Time Pay” section of the applicable Wage Order, “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.”

As set forth in detail above, the Employer violated Labor Code sections 510, 1197, and 1198, and the “Minimum Wages” and “Hours and Days of Work” Sections of the Applicable Wage Order because it did not pay Claimant and other aggrieved employees all minimum, regular, and overtime wages for all hours worked.

FAILURE TO PROVIDE MEAL AND REST PERIODS

(Labor Code §§ 226.2, 226.7, 512(a), and 1198, and the “Meal Periods” and “Rest Periods” Sections of the Applicable Wage Order)

As set forth herein, during the time that Claimant performed work for the Employer, the Employer did not provide Claimant and other aggrieved employees all lawful and compliant meal periods. As a result, Claimant and other employees were not authorized and permitted to take a thirty minute, uninterrupted, off-duty meal period. Claimant and other employees were required to work through their meal periods and were not permitted to leave the premises during meals. Additionally, compliant off-duty rest periods were not provided as required by the California Labor Code. During any rest break, Claimant and other employees were required to make themselves immediately available to any customers who needed assistance. Accordingly, the Employer denied Claimant and other aggrieved employees with compliant meal and rest periods and the meal and rest premiums due to them under the law.

Labor Code section 226.7(c) states: “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Consequently, Claimant is entitled to receive a one-hour wage premium for each day a compliant meal period was not provided and a one-hour wage premium for each day a compliant rest period was not provided. Claimant intends to pursue all remedies, including recovery of wages, interest, attorney’s fees and costs, and penalties to the extent allowed by law.

Labor Code section 512(a) states: "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

Labor Code section 226.7(b) states: "An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health."

Labor Code section 1198 states: "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

Pursuant to the "Meal Period" Section of the applicable IWC Wage Order, no employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period will be waived by mutual consent of the employer and the employee. If an employer fails to provide an employee a meal period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

Pursuant to the "Rest Period" Section of the applicable Wage Order, every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. If an employer fails to provide an employee a rest period in accordance with the applicable provision of the order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation of each workday that the rest period is not provided.

As set forth above, the Employer denied Claimant and employees meal and rest periods due to them under the law. Consequently, the Employer must pay one hour of wages for each day a proper meal period was not properly provided and one hour of wages for each day a rest period was not properly provided. This applies to Claimant and all other aggrieved employees who were not provided with legally compliant meal periods and rest breaks.

FAILURE TO PAY ALL VACATION WAGES
(Labor Code §§ 218.5, 218.6, 227.3, and 2698, *et seq.*)

California Labor Code section 227.3 states, in pertinent part: "Whenever a contract of employment or employer policy provides for paid vacations, and an employee is terminated

without having taken off his vested vacation time, all vested vacation shall be paid to him as wages at his final rate in accordance with such contract of employment or employer policy respecting eligibility or time served; provided, however, that an employment contract or employer policy shall not provide for forfeiture of vested vacation time upon termination. The Labor Commissioner or a designated representative, in the resolution of any dispute with regard to vested vacation time, shall apply the principles of equity and fairness.”

The Employer did not pay its aggrieved employees all appropriate vacation wages pursuant to its policies and as required by California Labor Code.

FAILURE TO PROVIDE ACCURATE WAGE STATEMENTS

(Labor Code §§ 246(i), 226(a), 226.3, 1198, and 2699, and the
“Records” Section of the Applicable Wage Order)

Labor Code section 226(a) states in pertinent part: “An employer, semimonthly or at the time of each payment of wages, shall furnish to his or her employee, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing: (1) gross wages earned; (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and the last four digits of his or her social security number 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 during the pay period and the corresponding number of hours worked at each hourly rate by the employee... and if the employer is a temporary services employer as defined in Section 201.3, the rate of pay and the total hours worked for each temporary services assignment. ”

Furthermore, Labor Code section 226(e)(2)(A) states: “An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide a wage statement.”

Labor Code section 226.3 imposes an additional civil penalty on the employer of \$250.00 per employee per violation of Labor Code section 226(a) in an initial citation and \$1,000.00 per employee for each violation in a subsequent citation. In addition, Labor Code section 226(e) imposes a penalty of the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of \$4,000, and Claimant is entitled to an award of costs and reasonable attorney's fees.

Labor Code section 246(i) further requires that an employer provide employees written notice setting forth the amount of paid sick leave available either on an employee's wage statement pursuant to Section 226 or in a separate writing on the designated pay date.

The Employer failed to provide Claimant with accurate, timely itemized wage statements complying with the requirements of the Labor Code and applicable IWC Wage Order. During at least a part of Claimant's tenure, he was not provided any access to his wage statements. The wage statements subsequently made available did not include the correct number of hours worked and wages earned. Claimant will pursue all remedies, including recovery of wages, interest, attorneys' fees and costs, penalties and those provided by the PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees of the Employer.

**FAILURE TO TIMELY PAY WAGES DUE DURING
AND UPON TERMINATION OF EMPLOYMENT**

(Labor Code §§ 201, 201.3, 202, 203, 204, 256, 1198, and 2699, and the "Minimum Wages"
Section of the Applicable Wage Order)

Labor Code section 204(a) states, in pertinent part: "All wages . . . earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Section 204(d) states, "The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period." The "Minimum Wages" Section of the applicable Wage Order further states "every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period."

Labor Code section 201 states: "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Labor Code section 202 states "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code section 201.3 states, in relevant part: "If an employee of a temporary services employer is assigned to work for a client, that employee's wages are due and payable no less frequently than weekly, regardless of when the assignment ends, and wages for work performed during any calendar week shall be due and payable not later than the regular payday of the following calendar week...If an employee of a temporary services employer is assigned to work for a client and is discharged by the temporary services employer or leasing employer, wages are due and payable as provided in Section 201...If an employee of a temporary services employer is assigned to work for a client and quits his or her employment with the temporary services employer, wages are due and payable as provided in Section 202... A temporary services employer who violates this section shall be subject to the civil penalties provided for in Section 203, and to any other penalties available at law."

Labor Code section 203(a) states, in relevant part: "If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. An employee who secretes or absents himself or herself to avoid payment to his or her, or who refuses to receive the payment

when fully tendered to his or her, including any penalty then accrued under this section, is not entitled to any benefit under this section for the time during which he or she so avoids payment.”

Labor Code section 210(a) provides: “(a) In addition to, *and entirely independent and apart from, any other penalty provided in this article*, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 205, 205.5, and 1197.5, shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” [Emphasis added.]

Labor Code section 256 states: “The Labor Commissioner shall impose a civil penalty in an amount not exceeding 30 days’ pay as waiting time under the terms of Section 203.”

The Employer failed to timely pay Claimant and aggrieved employees all wages due and owing during and upon termination of employment. The Employer willfully failed to pay all wages and penalties when required by Sections 201, 201.3, 202, and 204 of the Labor Code. Therefore, the penalties to all affected employees, including Claimant.

FAILURE TO REIMBURSE EXPENSES (Labor Code §§ 2802 and 2804)

California Labor Code section 2802(a) states: “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

Labor Code section 2802(b) states: “All awards made by a Court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss.” The exact amount of interest is in an amount to be proven at time of trial.

Furthermore, Labor Code section 2802(c) states: “For the purposes of this section, the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee in enforcing the rights granted by this section.”

“Any contract or agreement, express or implied, made by any employee to waive the benefits of this article or any part thereof is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled to under the laws of this State.” Cal. Labor Code § 2804.

The Employer failed to fulfill these obligations when it failed to reimburse Claimant and other aggrieved employees for all costs and expenses they incurred while working for the Employer, including but not limited to cell phone and internet costs, parking costs, and mileage.

UNLAWFUL AGREEMENTS
(Labor Code §§ 96(k), 98.6, and 432.5)

Labor Code section 432.5 states: “No employer, agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree in writing, to any term or condition, which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.”

The California Constitution guarantees Claimant and other current and former employees a right to privacy. Cal. Const. art. I, § 1. Labor Code section 96(k) further allows Claimant to pursue claims for lost wages stemming from lawful conduct occurring during non-working hours away from employer’s premises.

To the extent that the Employer required Claimant and/or any other aggrieved employee to sign an agreement containing any term or condition prohibited by law, Claimant will pursue all remedies, including recovery of wages, interest, attorney’s fees and costs, penalties and those provided by PAGA, to the extent allowed by law, on behalf of himself and other aggrieved employees of the Employer.

**CIVIL PENALTIES FOR VIOLATION OF
THE LABOR CODE AND IWC WAGE ORDERS**
(Labor Code §§ 558, 558.1, and 1197.1)

Labor Code section 558 subjects any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of Part 2, Chapter 1, of the Labor Code or any provision regulating hours and days of work in any IWC Wage Order to a civil penalty in the amount of \$50 for any initial violation for each pay period in which an employee is underpaid in addition to an amount sufficient to recover underpaid wages, and \$100 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

Labor Code section 558.1(a) states: “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.”

Labor Code section 1197.1 states that any employer or other person acting either individually or as an officer, agent or employee of another person, which pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission shall be subject to a civil penalty and restitution of wages payable to the employee in an amount of \$100 for the initial violation for each pay period in which an employee underpaid in addition to an amount sufficient to recover underpaid wages, and \$250 for each subsequent violation in addition to an amount sufficient to recover underpaid wages, which shall be paid to each affected employee.

As set forth above, the Employer violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 510, 1197, and 1198, and caused the employees to be paid less

than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

As set forth above, WestRock Services, LLC was the employers, or other person acting on behalf the employer, and violated, or caused to be violated the IWC Wage Order regulating the hours and days of work, Labor Code sections 203, 226, 226.7, 1194, 2802, 510, 512, 1197, and 1198, and caused the employees to be paid less than the minimum set by the IWC Wage Order. As a result, the Employer is liable for civil penalties under Labor Code sections 558, 558.1, and 1197.1.

DUTIES OF EMPLOYER

(Labor Code §§ 246(i), 1174, 1174.5, 2810.5, 2751, and 1198 and § 7 of the Applicable IWC Wage Order)

Labor Code section 1174 describes certain duties of every employer in this state. Subsection (d) of this labor code section requires that payroll records show the hours worked daily by employees and the corresponding wages to be paid for the hours worked. The Employer violated this requirement by its failure to accurately record employee hours worked and/or paid. Labor Code section 1174.5 imposes a civil penalty of \$500 for an employer's failure to maintain accurate and complete records. This civil penalty is addition to the civil penalty of \$100 per pay period, per aggrieved employee that would be imposed pursuant to Labor Code section 2699 for a violation of Labor Code section 1174(d). Furthermore, Claimant and all other current and former employees are entitled to collect 25% of the penalty imposed pursuant to Section 2699.

The Employer violated the section 1174 by failing to maintain time records and failing to provide the requisite notices.

ATTORNEY'S FEES, COSTS, INTEREST AND PENALTIES

(Labor Code §§ 218.6, 226(e), 1194, 1194.2, 2699, *et seq.*, and 2802)

Labor Code sections 218.6, 226(e), 1194, 1194.2, and 2699, *et seq.* give employees the right to recover in a civil action the unpaid balance of the full amount of minimum wages, regular wages, overtime compensation, reimbursements, damages, liquidated damages, and penalties, including interest thereon, reasonable attorney's fees, and costs of suit.

Pursuant to Labor Code section 2699, *et seq.*, aggrieved employees are entitled to collect 25% of the penalty assessment and 100% of the underpaid wages. Accordingly, the Employer is liable for these items in addition to the unpaid wages and reimbursements. Claimant has already incurred in actual damages, costs and attorney's fees and will continue to incur costs as a result of WestRock Services, LLC's unlawful actions.

CONCLUSION

The Employer violated labor code sections as set forth herein. Claimant will pursue all remedies on behalf of himself and other aggrieved employees, including recovery of attorney's fees, costs, damages and penalties to the extent allowed by law. The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through

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discovery and/or expert review, Claimant becomes aware of additional claims, he reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action in the complaint for damages. Should you have any questions, please feel free to contact me at your convenience.

Sincerely,
COHELAN KHOURI SINGER

A handwritten signature in black ink, appearing to read 'Kristina De La Rosa', written over the printed name.

Kristina De La Rosa

cc:
Via Email Only
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