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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

MARK WILSON, individually, and
on behalf of other members of the
general public similarly situated,

Plaintiff,

vs.

PACTIV LLC, a Delaware limited
liability company; and DOES 1
through 10, inclusive,

Defendants.

Case No.: 5:20-cv-01691-SB-KK

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE
§§ 2698, ET SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code § 227.3 (Failure to Pay Vested Vacation Time and Paid Time Off Upon Termination);
- (7) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (8) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (9) Violation of California Labor Code

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- § 2802 (Unreimbursed Business Expenses);
- (10) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Mark Wilson, individually and on behalf of all other members of
2 the public similarly situated and as an aggrieved employee and on behalf of all
3 other aggrieved employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to Rule 23 of the Federal Rules
6 of Civil Procedure to recover wages and all other available relief on behalf of
7 Plaintiff and all similarly situated current and former non-exempt, hourly paid
8 employees of Defendants, and a non-class representative enforcement action
9 brought pursuant to the Labor Code Private Attorneys General Act of 2004,
10 California Labor Code section 2698 et seq. ("PAGA") to recover civil penalties
11 and any other relief recoverable by the State of California on behalf of current
12 and former non-exempt, hourly-paid employees of Defendants in California,
13 against whom one or more violations of any provision in Division 2 Part 2
14 Chapter 1 of the Labor Code or any provision regulating hours and days of work
15 in the applicable Industrial Welfare Commission ("IWC") Wage Order were
16 committed, as set forth in this complaint.

17 2. This Court has original jurisdiction over this action pursuant to 28
18 U.S.C. § 1332(d) and based on 28 U.S.C. §§ 1441, 1446.

19 3. Venue is proper in this Court because this case was originally filed in
20 the Superior Court of California for the County of San Bernardino. Venue
21 properly lies in the United States District Court for the Central District of
22 California pursuant to 28 U.S.C. §§ 84(a), 1391(b) and 1441(a).

23 4. The PAGA statute authorizes aggrieved employees to sue directly as
24 the proxy of the State of California for civil penalties for violations of various
25 provisions in the California Labor Code.

26 THE PARTIES

27 5. Plaintiff Mark Wilson is a resident of San Bernardino, in San
28 Bernardino County, California. Defendants employed Plaintiff as an hourly

1 paid, non-exempt Lift Truck Operator from approximately August 2017 to
2 March 2020. Plaintiff worked for Defendants at their location in San
3 Bernardino, California. During his employment, Plaintiff typically worked eight
4 (8) or more hours per day, and five (5) days per week. Plaintiff's primary job
5 duties included, without limitation, operating a forklift to unload and load
6 trailers, transporting and organizing product, and forming and packaging pallets.

7 6. PACTIV LLC was and is, upon information and belief, a Delaware
8 limited liability company, and at all times hereinafter mentioned, an employer
9 whose employees are engaged throughout this county, the State of California, or
10 the various states of the United States of America.

11 7. Plaintiff is unaware of the true names or capacities of the
12 Defendants sued herein under the fictitious names DOES 1 through 10, but will
13 seek leave of this Court to amend the complaint and serve such fictitiously
14 named Defendants once their names and capacities become known.

15 8. Plaintiff is informed and believes, and thereon alleges, that DOES 1
16 through 10 were the partners, agents, owners, or managers of PACTIV LLC at
17 all relevant times.

18 9. Plaintiff is informed and believes, and thereon alleges, that each and
19 all of the acts and omissions alleged herein was performed by, or is attributable
20 to, PACTIV LLC and/or DOES 1 through 10 (collectively, "Defendants" or
21 "PACTIV"), each acting as the agent, employee, alter ego, and/or joint venturer
22 of, or working in concert with, each of the other co-Defendants and was acting
23 within the course and scope of such agency, employment, joint venture, or
24 concerted activity with legal authority to act on the others' behalf. The acts of
25 any and all Defendants were in accordance with, and represent, the official
26 policy of Defendants.

27 10. At all relevant times, Defendants, and each of them, ratified each
28 and every act or omission complained of herein. At all relevant times,

1 Defendants, and each of them, aided and abetted the acts and omissions of each
2 and all the other Defendants in proximately causing the damages herein alleged.

3 11. Plaintiff is informed and believes, and thereon alleges, that each of
4 said Defendants is in some manner intentionally, negligently, or otherwise
5 responsible for the acts, omissions, occurrences, and transactions alleged herein.

6 **GENERAL ALLEGATIONS**

7 12. Defendants are the leading manufacturer and distributor of food and
8 beverage packaging and food service products in North America. Defendants
9 operate at least seven (7) manufacturing plants in California. Upon information
10 and belief, Defendants maintain a single, centralized Human Resources (“HR”)
11 department at their company headquarters in Lake Forest, Illinois, which is
12 responsible for the recruiting and hiring of new employees, and communicating
13 and implementing Defendants’ company-wide policies, including timekeeping
14 policies and meal and rest period policies, to employees throughout California.

15 13. In particular, Plaintiff and class members, on information and belief,
16 received the same standardized documents and/or written policies. Upon
17 information and belief, the usage of standardized documents and/or written
18 policies, including new-hire documents, indicate that Defendants dictated
19 policies at the corporate level and implemented them company-wide, regardless
20 of their employees’ assigned locations or positions. Upon information and
21 belief, Defendants set forth uniform policies and procedures in several
22 documents provided at an employee’s time of hire, including, but not limited to,
23 New Hire Checklist, Pactiv Critical Safety Rules Policy, and Acknowledgment
24 of Receipt of Employee Handbook.

25 14. Upon information and belief, Defendants maintain a centralized
26 Payroll department at their company headquarters in Lake Forest, Illinois, which
27 processes payroll for all non-exempt, hourly paid employees working for
28 Defendants at their various locations and jobsites in California, including

1 Plaintiff and class members. Based upon information and belief, Defendants
2 issue the same formatted wage statements to all non-exempt, hourly paid
3 employees in California, irrespective of their work locations. Upon information
4 and belief, Defendants process payroll for departing employees in the same
5 manner throughout the State of California, regardless of the manner in which
6 each employee's employment ends.

7 15. Defendants continue to employ non-exempt or hourly paid
8 employees in California.

9 16. Plaintiff is informed and believes, and thereon alleges, that at all
10 times herein mentioned, Defendants were advised by skilled lawyers and other
11 professionals, employees and advisors knowledgeable about California labor and
12 wage law, employment and personnel practices, and about the requirements of
13 California law.

14 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff
15 and class members were not paid for all hours worked because all hours worked
16 were not recorded.

17 18. Plaintiff is informed and believes, and thereon alleges, that
18 Defendants knew or should have known that Plaintiff and class members were
19 entitled to receive certain wages for overtime compensation and that they were
20 not receiving certain wages for overtime compensation.

21 19. Plaintiff is informed and believes, and thereon alleges, that
22 Defendants knew or should have known that Plaintiff and class members were
23 entitled to be paid at a regular rate of pay, and corresponding overtime rate of
24 pay, that included as eligible income all remuneration required by law, including
25 but not limited to, all income derived from shift differential pay, incentive pay,
26 nondiscretionary bonuses, and/or other forms of compensation.

27 20. Plaintiff is informed and believes, and thereon alleges, that
28 Defendants knew or should have known that Plaintiff and class members were

1 entitled to receive at least minimum wages for compensation and that they were
2 not receiving at least minimum wages for work that was required to be done off-
3 the-clock. In violation of the California Labor Code, Plaintiff and class members
4 were not paid at least minimum wages for work done off-the-clock.

5 21. Plaintiff is informed and believes, and thereon alleges, that
6 Defendants knew or should have known that Plaintiff and class members were
7 entitled to meal periods in accordance with the Labor Code or payment of one
8 (1) additional hour of pay at their regular rates of pay when they were not
9 provided with timely, uninterrupted, thirty (30) minute meal periods and that
10 Plaintiff and class members were not provided with all meal periods or payment
11 of one (1) additional hour of pay at their regular rates of pay when they did not
12 receive a timely, uninterrupted, thirty (30) minute meal period.

13 22. Plaintiff is informed and believes, and thereon alleges, that
14 Defendants knew or should have known that Plaintiff and class members were
15 entitled to rest periods in accordance with the Labor Code and applicable IWC
16 Wage Order or payment of one (1) additional hour of pay at their regular rates of
17 pay when they were not authorized and permitted to take a compliant rest period.
18 In violation of the California Labor Code, Plaintiff and class members were not
19 authorized and permitted to take compliant rest periods, nor did Defendants
20 provide Plaintiff and class members with payment of one (1) additional hour of
21 pay at their regular rates of pay when they were not authorized and permitted to
22 take a compliant rest period.

23 23. Plaintiff is informed and believes, and thereon alleges, that
24 Defendants knew or should have known that Plaintiff and class members were
25 entitled to receive complete and accurate wage statements in accordance with
26 California law. In violation of the California Labor Code, Plaintiff and class
27 members were not provided complete and accurate wage statements.

28 24. Plaintiff is informed and believes, and thereon alleges, that

1 Defendants knew or should have known that they had a duty to maintain accurate
2 and complete payroll records in accordance with the Labor Code and applicable
3 IWC Wage Order, but willfully, knowingly, and intentionally failed to do so.

4 25. Plaintiff is informed and believes, and thereon alleges, that
5 Defendants knew or should have known that Plaintiff and class members were
6 entitled to payment of all vested vacation wages upon termination of
7 employment. In violation of the California Labor Code, Plaintiff and class
8 members did not receive payment of all vested vacation wages due.

9 26. Plaintiff is informed and believes, and thereon alleges, that
10 Defendants knew or should have known that Plaintiff and class members were
11 entitled to timely payment of all wages earned upon termination of employment.
12 In violation of the California Labor Code, Plaintiff and class members did not
13 receive payment of all wages due, including, but not limited to, overtime wages,
14 minimum wages, meal and rest period premiums, and/or all vested vacation
15 wages, within permissible time periods.

16 27. Plaintiff is informed and believes, and thereon alleges, that
17 Defendants knew or should have known that Plaintiff and class members were
18 entitled to timely payment of wages during their employment. In violation of the
19 California Labor Code, Plaintiff and class members did not receive payment of
20 all wages, including, but not limited to, overtime wages, minimum wages, and/or
21 meal and rest period premiums, within permissible time periods.

22 28. Plaintiff is informed and believes, and thereon alleges, that at all
23 times herein mentioned, that Defendants knew or should have known that they
24 had a duty to cover the costs and expenses Plaintiff and class members incurred
25 obtaining mandatory physical examinations and/or drug tests, but willfully,
26 knowingly, and intentionally failed to do so.

27 29. Plaintiff is informed and believes, and thereon alleges, that
28 Defendants knew or should have known that Plaintiff and class members were

1 entitled to receive full reimbursement for all business-related expenses and costs
2 they incurred during the course and scope of their employment and that they did
3 not receive full reimbursement of applicable business-related expenses and costs
4 incurred.

5 30. Plaintiff is informed and believes, and thereon alleges, that at all
6 times herein mentioned, Defendants knew or should have known that they had a
7 duty to provide Plaintiff and class members safety devices and safeguards, such
8 as with personal protective equipment to protect their life, safety, and health in
9 the workplace, but willfully, knowingly, and intentionally failed to do so

10 31. Plaintiff is informed and believes, and thereon alleges, that at all
11 times herein mentioned, Defendants knew or should have known that they had a
12 duty to compensate Plaintiff and class members for all hours worked, and that
13 Defendants had the financial ability to pay such compensation, but willfully,
14 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff
15 and class members that they were properly denied wages, all in order to increase
16 Defendants' profits.

17 **PAGA REPRESENTATIVE ALLEGATIONS**

18 32. At all times herein set forth, PAGA provides that any provision of
19 law under the Labor Code and applicable IWC Wage Order that provides for a
20 civil penalty to be assessed and collected by the LWDA for violations of the
21 California Labor Code and applicable IWC Wage Order may, as an alternative,
22 be recovered by aggrieved employees in a civil action brought on behalf of
23 themselves and other current or former employees pursuant to procedures
24 outlined in California Labor Code section 2699.3.

25 33. PAGA defines an "aggrieved employee" in Labor Code section
26 2699(c) as "any person who was employed by the alleged violator and against
27 whom one or more of the alleged violations was committed."

28 34. Plaintiff and other current and former employees of Defendants are

1 “aggrieved employees” as defined by Labor Code section 2699(c) in that they are
2 all Defendants’ current or former employees and one or more of the alleged
3 violations were committed against them.

4 35. Pursuant to California Labor Code sections 2699.3 and 2699.5, an
5 aggrieved employee, including Plaintiff, may pursue a civil action arising under
6 PAGA after the following requirements have been met:

- 7 (a) The aggrieved employee or representative shall give written
8 notice by online filing with the LWDA and by certified mail
9 to the employer of the specific provisions of the California
10 Labor Code alleged to have been violated, including the facts
11 and theories to support the alleged violation.
- 12 (b) An aggrieved employee’s notice filed with the LWDA
13 pursuant to 2699.3(a) and any employer response to that
14 notice shall be accompanied by a filing fee of seventy-five
15 dollars (\$75).
- 16 (c) The LWDA shall notify the employer and the aggrieved
17 employee or representative by certified mail that it does not
18 intend to investigate the alleged violation (“LWDA’s Notice”)
19 within sixty (60) calendar days of the postmark date of the
20 aggrieved employee’s notice. Upon receipt of the LWDA
21 Notice, or if no LWDA Notice is provided within sixty-five
22 (65) calendar days of the postmark date of the aggrieved
23 employee’s notice, the aggrieved employee may commence a
24 civil action pursuant to California Labor Code section 2699 to
25 recover civil penalties.

26 36. Pursuant to California Labor Code sections 2699.3(c), aggrieved
27 employees, through Plaintiff, may pursue a civil action arising under PAGA for
28 violations of any provision other than those listed in Section 2699.5 after the

1 following requirements have been met:

- 2 (a) The aggrieved employee or representative shall give written
3 notice by online filing with the LWDA and by certified mail
4 to the employer of the specific provisions of the California
5 Labor Code alleged to have been violated (other than those
6 listed in Section 2699.5), including the facts and theories to
7 support the alleged violation.
- 8 (b) An aggrieved employee's notice filed with the LWDA
9 pursuant to 2699.3(c) and any employer response to that
10 notice shall be accompanied by a filing fee of seventy-five
11 dollars (\$75).
- 12 (c) The employer may cure the alleged violation within thirty-
13 three (33) calendar days of the postmark date of the notice
14 sent by the aggrieved employee or representative. The
15 employer shall give written notice within that period of time
16 by certified mail to the aggrieved employee or representative
17 and by online filing with the LWDA if the alleged violation is
18 cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the
20 alleged violation is not cured within the 33-day period, the
21 aggrieved employee may commence a civil action pursuant to
22 Section 2699.

23 37. On May 28, 2020, Plaintiff provided written notice by online filing
24 to the LWDA and by Certified Mail to Defendants of the specific provisions of
25 the California Labor Code alleged to have been violated, including facts and
26 theories to support the alleged violations, in accordance with California Labor
27 Code section 2699.3. Plaintiff's written notice was accompanied with the
28 applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA

1 Administrator confirmed receipt of Plaintiff's written notice and assigned
2 Plaintiff PAGA Case Number LWDA-CM-791481-20. A true and correct copy
3 of Plaintiff's written notice to the LWDA and Defendants is attached hereto as
4 "Exhibit 1."

5 38. As of the filing date of this complaint, over 65 days have passed
6 since Plaintiff sent the notice described above to the LWDA, and the LWDA has
7 not responded that it intends to investigate Plaintiff's claims and Defendants
8 have not cured the violations.

9 39. Thus, Plaintiff has satisfied the administrative prerequisites under
10 California Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties
11 against Defendants for violations of California Labor Code sections 201, 202,
12 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194,
13 1197, 1197.1, 1198, 2802, 6401, and 6403.

14 40. Labor Code section 558(a) provides "[a]ny employer or other person
15 acting on behalf of an employer who violates, or causes to be violated, a section
16 of this chapter or any provision regulating hours and days of work in any order
17 of the Industrial Welfare Commission shall be subject to a civil penalty as
18 follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid
19 employee for each pay period for which the employee was underpaid (2)
20 For each subsequent violation, one hundred dollars (\$100) for each underpaid
21 employee for each pay period for which the employee was underpaid"
22 Labor Code section 558(c) provides "[t]he civil penalties provided for in this
23 section are in addition to any other civil or criminal penalty provided by law."

24 41. Defendants, at all times relevant to this complaint, were employers
25 or persons acting on behalf of an employer(s) who violated Plaintiff's and other
26 aggrieved employees' rights by violating various sections of the California Labor
27 Code as set forth above.

28 42. As set forth below, Defendants have violated numerous provisions

1 of both the Labor Code sections regulating hours and days of work as well as the
2 applicable IWC Wage Order.

3 43. Pursuant to PAGA, and in particular, California Labor Code
4 sections 2699(a), 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff,
5 acting in the public interest as a private attorney general, seeks assessment and
6 collection of civil penalties for himself, all other aggrieved employees, and the
7 State of California against Defendants for violations of California Labor Code
8 sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516,
9 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

10 **CLASS ACTION ALLEGATIONS**

11 44. Plaintiff brings this action on his own behalf, as well as on behalf of
12 each and all other persons similarly situated, and thus seeks class certification
13 under Rule 23 of the Federal Rules of Rule 23 of the Federal Rules of Civil
14 Procedure.

15 45. All claims alleged herein arise under California law for which
16 Plaintiff seeks relief authorized by California law.

17 46. Plaintiff's proposed class consists of and is defined as follows:

18 All persons who worked for Defendants as non-exempt,
19 hourly paid employees in California, within four years
20 prior to the filing of the initial complaint until the date of
trial ("Class").

21 47. Plaintiff's proposed subclass consists of and is defined as follows:

22 All persons who worked for Defendants as non-exempt,
23 hourly paid employees in California and who received at
24 least one wage statement within one (1) year prior to the
filing of the initial complaint until the date of trial
("Subclass").

25 48. Members of the Class and Subclass are referred to herein as "class
26 members."

27 49. Plaintiff reserves the right to redefine the Class and Subclass and to
28 add additional subclasses as appropriate based on further investigation,

1 discovery, and specific theories of liability.

2 50. This action is brought and properly may be maintained as a class
3 action pursuant to the provisions of Federal Rules of Civil Procedure 23(a)(1)-(4)
4 and 23(b)(1), (b)(2) or (b)(3) and satisfies the requirements thereof. There are
5 common questions of law and fact as to class members that predominate over
6 questions affecting only individual members, including, but not limited to:

- 7 (a) Whether Defendants required Plaintiff and class members to
8 work over eight (8) hours per day, over twelve (12) hours per
9 day, or over forty (40) hours per week and failed to pay all
10 legally required overtime compensation to Plaintiff and class
11 members;
- 12 (b) Whether Defendants failed to properly calculate the “regular
13 rate” of pay on which Plaintiff’s and class members’ overtime
14 rate of pay was based;
- 15 (c) Whether Defendants failed to pay Plaintiff and class members
16 at least minimum wages for all hours worked;
- 17 (d) Whether Defendants failed to provide Plaintiff and class
18 members with meal periods;
- 19 (e) Whether Defendants failed to authorize and permit Plaintiff
20 and class members to take rest periods;
- 21 (f) Whether Defendants provided Plaintiff and class members
22 with complete and accurate wage statements as required by
23 California Labor Code section 226(a);
- 24 (g) Whether Defendants maintained accurate payroll records as
25 required by California Labor Code section 1174(d);
- 26 (h) Whether Defendants failed to pay Plaintiff and class members
27 all vested vacation time as wages at their final rate in
28 accordance with the terms and conditions of Defendants’

- 1 employment contract and/or policy;
- 2 (i) Whether Defendants failed to pay earned overtime wages,
- 3 minimum wages, meal and rest period premiums, and all
- 4 vested vacation wages due to Plaintiff and class members
- 5 upon their discharge;
- 6 (j) Whether Defendants failed timely to pay overtime wages,
- 7 minimum wages, and meal and rest period premiums to
- 8 Plaintiff and class members during their employment;
- 9 (k) Whether Defendants failed to pay Plaintiff and class members
- 10 for the costs of mandatory physical examinations and/or drug
- 11 testing;
- 12 (l) Whether Defendants failed to reimburse Plaintiff and class
- 13 members for necessary and required business-related
- 14 expenditures and/or losses incurred by them in the scope of
- 15 their employment;
- 16 (m) Whether Defendants failed to provide Plaintiff and class
- 17 members with safety devices and safeguards, such as personal
- 18 protective equipment;
- 19 (n) Whether Defendants engaged in unlawful and unfair business
- 20 practices in violation of California Business & Professions
- 21 Code sections 17200, *et seq.*; and
- 22 (o) The appropriate amount of damages, restitution, or monetary
- 23 penalties resulting from Defendants' violations of California
- 24 law.

25 51. There is a well-defined community of interest in the litigation and

26 the class members are readily ascertainable:

- 27 (a) Numerosity: The class members are so numerous that joinder
- 28 of all members would be unfeasible and impractical. The

1 membership of the entire class is unknown to Plaintiff at this
2 time; however, the class is estimated to be greater than one
3 hundred (100) individuals and the identity of such
4 membership is readily ascertainable by inspection of
5 Defendants' employment records.

6 (b) Typicality: Plaintiff is qualified to, and will, fairly and
7 adequately protect the interests of each class member with
8 whom he has a well-defined community of interest, and
9 Plaintiff's claims (or defenses, if any) are typical of all class
10 members as demonstrated herein.

11 (c) Adequacy: Plaintiff is qualified to, and will, fairly and
12 adequately protect the interests of each class member with
13 whom he has a well-defined community of interest and
14 typicality of claims, as demonstrated herein. Plaintiff
15 acknowledges that he has an obligation to make known to the
16 Court any relationship, conflicts or differences with any class
17 member. Plaintiff's attorneys, the proposed class counsel, are
18 versed in the rules governing class action discovery,
19 certification, and settlement. Plaintiff has incurred, and
20 throughout the duration of this action, will continue to incur
21 costs and attorneys' fees that have been, are, and will be
22 necessarily expended for the prosecution of this action for the
23 substantial benefit of each class member.

24 (d) Superiority: The nature of this action makes the use of class
25 action adjudication superior to other methods. A class action
26 will achieve economies of time, effort, and expense as
27 compared with separate lawsuits, and will avoid inconsistent
28 outcomes because the same issues can be adjudicated in the

1 same manner and at the same time for the entire class.

2 (e) Public Policy Considerations: Employers in the State of
 3 California violate employment and labor laws every day.
 4 Current employees are often afraid to assert their rights out of
 5 fear of direct or indirect retaliation. Former employees are
 6 fearful of bringing actions because they believe their former
 7 employers might damage their future endeavors through
 8 negative references and/or other means. Class actions provide
 9 the class members who are not named in the complaint with a
 10 type of anonymity that allows for the vindication of their
 11 rights while simultaneously protecting their privacy.

12 **FIRST CAUSE OF ACTION**

13 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime** 14 **(Against all Defendants)**

15 52. Plaintiff incorporates by reference and re-alleges as if fully stated
 16 herein each and every allegation set forth above.

17 53. Labor Code section 1198 makes it illegal to employ an employee
 18 under conditions of labor that are prohibited by the applicable wage order.
 19 California Labor Code section 1198 requires that “. . . the standard conditions of
 20 labor fixed by the commission shall be the . . . standard conditions of labor for
 21 employees. The employment of any employee . . . under conditions of labor
 22 prohibited by the order is unlawful.”

23 54. California Labor Code section 1198 and the applicable IWC Wage
 24 Order provide that it is unlawful to employ persons without compensating them
 25 at a rate of pay either time-and-one-half or two-times that person’s regular rate of
 26 pay, depending on the number of hours worked by the person on a daily or
 27 weekly basis.

28 55. Specifically, the applicable IWC Wage Order provides that

1 Defendants are and were required to pay Plaintiff and class members working
2 more than eight (8) hours in a day or more than forty (40) hours in a workweek,
3 at the rate of time and one-half (1½) for all hours worked in excess of eight (8)
4 hours in a day or more than forty (40) hours in a workweek.

5 56. The applicable IWC Wage Order further provides that Defendants
6 are and were required to pay Plaintiff and class members working more than
7 twelve (12) hours in a day, overtime compensation at a rate of two (2) times their
8 regular rate of pay. An employee's regular rate of pay includes all remuneration
9 for employment paid to, or on behalf of, the employee, including
10 nondiscretionary bonuses and incentive pay.

11 57. California Labor Code section 510 codifies the right to overtime
12 compensation at one and one-half (1½) times the regular rate of pay for hours
13 worked in excess of eight (8) hours in a day or forty (40) hours in a week or for
14 the first eight (8) hours worked on the seventh (7th) day of work, and to overtime
15 compensation at twice the employee's regular rate of pay for hours worked in
16 excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
17 the seventh (7th) day of work.

18 58. During the relevant time period, Defendants willfully failed to pay
19 all overtime wages owed to Plaintiff and class members. During the relevant
20 time period, Plaintiff and class members were not paid overtime premiums for all
21 of the hours they worked in excess of eight (8) hours in a day, in excess of
22 twelve (12) hours in a day, and/or in excess of forty (40) hours in a week,
23 because all hours worked were not recorded.

24 59. During the relevant period, Defendants had, and continue to have, a
25 company-wide policy and/or practice of discouraging and impeding Plaintiff and
26 class members from recording hours worked that were outside of their scheduled
27 shifts, resulting in a failure to account for all of the time Plaintiff and class
28 members worked. For example, Defendants pressured Plaintiff to clock in up to

1 seven (7) minutes before the start of his scheduled shift and begin working, but,
2 on information and belief, Defendants timekeeping system adjusted his clock-in
3 time to his scheduled start time. Thus, Defendants failed to track this time spent
4 working before scheduled shifts, and Plaintiff and class members received no
5 compensation for this time.

6 60. Defendants knew or should have known that as a result of these
7 company-wide practices and/or policies, Plaintiff and class members were
8 performing assigned duties that were not accounted for before their shifts, and
9 were suffered or permitted to perform work for which they were not paid.
10 Because Plaintiff and class members worked shifts of eight (8) hours a day or
11 more or forty (40) hours a week or more, some of this off-the-clock work
12 qualified for overtime premium pay. Therefore, Plaintiff and class members
13 were not paid overtime wages for all of the overtime hours they actually worked.

14 61. Furthermore, Defendants did not pay Plaintiff and class members
15 the correct overtime rate for the recorded overtime hours that they generated. In
16 addition to an hourly wage, Defendants paid Plaintiff and class members shift
17 differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of
18 remuneration. However, in violation of the California Labor Code, Defendants
19 failed to incorporate all compensation, including, but not limited to, all incentive
20 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the
21 calculation of the regular rate of pay for purposes of calculating the overtime
22 wage rate. Therefore, during times when Plaintiff and class members worked
23 overtime and received these other forms of pay, Defendants failed to pay all
24 overtime wages by paying a lower overtime rate than required.

25 62. Specifically, Defendants paid Plaintiff and class members
26 nondiscretionary bonuses or incentive pay, including gift cards, for maintaining a
27 safe work environment and limiting the use of a facility's safety budget,
28 identifying and reporting unsafe conditions in the workplace, or for meeting

certain productivity-related metrics. On information and belief, these nondiscretionary bonuses and/or incentive pay were listed on Plaintiff's and class members' wage statements as "SAFETY INCENT," "NONCASH AWD," "AWARD," "GIFT CARD," and "GAIN SHARING." During pay periods that Plaintiff and class members were paid overtime and double time wages, Defendants failed to incorporate the nondiscretionary bonus and/or incentive pay into Plaintiff's and class members' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, Defendants paid Plaintiff and class members 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly calculate the overtime and double time rates of pay based on all remuneration paid has resulted in an underpayment of overtime and double time wages to Plaintiff and class members on a company-wide basis.

63. Defendants' failure to pay Plaintiff and class members the balance of overtime compensation as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class members are entitled to recover their unpaid overtime compensation, as well as interest, costs, and attorneys' fees.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

64. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

65. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful. Compensable work time is

defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

66. As set forth above, as a result of Defendants’ policy discouraging and impeding Plaintiff and class members from recording hours worked that were outside of their scheduled shifts, Plaintiff and class members were required to perform work off-the-clock before their scheduled shift start times to complete assigned job duties.

67. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff and class members worked through that qualified for overtime premium payment. To the extent that these off-the-clock hours did not qualify for overtime premium payment, Defendants did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

68. Defendants’ failure to pay Plaintiff and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiff and class members are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

THIRD CAUSE OF ACTION

Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period Violations (Against all Defendants)

69. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

70. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee

1 to work for a period of more than five (5) hours per day without providing the
2 employee with a meal period of not less than thirty (30) minutes, except that if
3 the total work period per day of the employee is not more than six (6) hours, the
4 meal period may be waived by mutual consent of both the employer and the
5 employee. Under California law, first meal periods must start after no more than
6 five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042
7 (Cal. 2012).

8 71. At all relevant times herein set forth, California Labor Code sections
9 226.7, 512(a), 516, and 1198 provide that no employer shall require an employee
10 to work during any meal period mandated by an applicable order of the IWC.

11 72. At all relevant times herein set forth, Labor Code sections 226.7 and
12 512(a) and the applicable IWC Wage Order also require employers to provide a
13 second meal period of not less than thirty (30) minutes if an employee works
14 over ten (10) hours per day or to pay an employee one (1) additional hour of pay
15 at the employee's regular rate, except that if the total hours worked is no more
16 than twelve (12) hours, the second meal period may be waived by mutual
17 consent of the employer and the employee only if the first meal period was not
18 waived.

19 73. During the relevant time period, Defendants did not schedule second
20 meal periods and had no policy for permitting Plaintiff and class members to
21 take second 30-minute meal periods on days that they worked in excess of ten
22 (10) hours in one day. For example, Plaintiff would work in excess of ten (10)
23 hours per day, and was not provided his second meal period during these shifts.
24 Plaintiff and class members did not sign valid meal period waivers on days that
25 they were entitled to meal periods and were not relieved of all duties.

26 74. Moreover, Defendants engaged in a company-wide practice and/or
27 policy of not paying all meal period premiums owed when compliant meal
28 periods are not provided. Because of Defendants' practices and/or policies,

1 Plaintiff and class members have not received premium pay for all missed, late,
2 and interrupted meal periods. Alternatively, to the extent that Defendants did
3 pay Plaintiff and class members premium pay for missed, late, and interrupted
4 meal periods, Defendants did not pay Plaintiff and class members at the correct
5 rate of pay for premium wages because Defendants systematically failed to
6 include all forms of compensation, such as shift differential pay, incentive pay,
7 nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate
8 of pay. As a result, Defendants failed to provide Plaintiff and class members
9 compliant meal periods in violation of California Labor Code sections 226.7,
10 512, and 516 and failed to pay the full meal period premiums due.

11 75. Defendants' conduct violates the applicable IWC Wage Order, and
12 California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class
13 members are therefore entitled to recover from Defendants one (1) additional hour
14 of pay at the employee's regular rate of compensation for each work day that the
15 meal period was not provided.

16 **FOURTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period** 18 **Violations** 19 **(Against all Defendants)**

20 76. Plaintiff incorporates by reference and re-alleges as if fully stated
21 herein each and every allegation set forth above.

22 77. At all relevant times herein set forth, the applicable IWC Wage
23 Order and California Labor Code sections 226.7, 516, and 1198 were applicable
24 to Plaintiff and class members' employment by Defendants.

25 78. At all relevant times, the applicable IWC Wage Order provides that
26 "[e]very employer shall authorize and permit all employees to take rest periods,
27 which insofar as practicable shall be in the middle of each work period" and that
28 the "rest period time shall be based on the total hours worked daily at the rate of

1 ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless
2 the total daily work time is less than three and one-half (3½) hours.

3 79. At all relevant times, California Labor Code section 226.7 provides
4 that no employer shall require an employee to work during any rest period
5 mandated by an applicable order of the California IWC. To comply with its
6 obligation to authorize and permit rest periods under California Labor Code
7 section 226.7 and the applicable IWC Wage Order, an employer must “relinquish
8 any control over how employees spend their break time, and relieve their
9 employees of all duties — including the obligation that an employee remain on
10 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security*
11 *Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC
12 Wage Order and California Labor Code section 226.7(b), Plaintiff and class
13 members are entitled to recover from Defendants one (1) additional hour of pay
14 at their regular rates of pay for each work day that a required rest period was not
15 authorized and permitted.

16 80. During the relevant time period, Defendants regularly failed to
17 authorize and permit Plaintiff and class members to take a ten (10) minute rest
18 period per each four (4) hour period worked or major fraction thereof.
19 Defendants had a company-wide policy and/or practice of failing to authorize
20 and permit Plaintiff and class members to take third rest periods when they
21 worked in excess of ten (10) hours in one day.

22 81. Furthermore, during the relevant time period, Defendants
23 maintained a company-wide on-premises rest period policy, which mandated that
24 Plaintiff and class members remain on Defendants’ premises during their rest
25 periods. For example, Defendants verbally told Plaintiff during his new-hire
26 orientation that he could not leave Defendants’ premises during his rest periods.
27 Because Plaintiff and class members were restricted from leaving the premises
28 during rest periods, they were denied the ability to use their rest periods freely

1 for their own purposes. Thus, Defendants effectively maintained control over
2 Plaintiff and class members during rest periods.

3 82. As a result of Defendants' practices and policies, Plaintiff and class
4 members worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
5 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to
6 which they were entitled. For example, throughout his employment, Plaintiff did
7 not receive a third rest period when working in excess of ten (10) hours.

8 83. Defendants have also engaged in a systematic, company-wide
9 practice and/or policy of not paying rest period premiums owed when rest
10 periods are not authorized and permitted. Alternatively, to the extent that
11 Defendants did pay Plaintiff and class members one (1) additional hour of
12 premium pay for missed rest periods, Defendants did not pay Plaintiff and class
13 members at the correct rate of pay for premium wages because Defendants failed
14 to include all forms of compensation, such as shift differential pay, incentive
15 pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular
16 rate of pay. As a result, Defendants denied Plaintiff and class members rest
17 periods and failed to pay them rest period premium wages due, in violation of
18 Labor Code section 226.7 and the applicable IWC Wage Order.

19 84. Defendants' conduct violates the applicable IWC Wage Order and
20 California Labor Code sections 226.7, 516, and 1198. Plaintiff and class
21 members are therefore entitled to recover from Defendants one (1) additional
22 hour of pay at the employee's regular rate of compensation for each work day
23 that a compliant rest period was not authorized and permitted.

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26 **FIFTH CAUSE OF ACTION**

27 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-** 28 **Compliant Wage Statements and Failure to Maintain Accurate Payroll**

Records**(Against all Defendants)**

85. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

86. At all relevant times herein set forth, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate and complete itemized wage statement in writing, including, but not limited to, the name and address of the legal entity that is the employer, the inclusive dates of the pay period, total hours worked, and all applicable rates of pay.

87. At all relevant times, Defendants have knowingly and intentionally provided Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements. For example, Defendants issued uniform wage statements to Plaintiff and Subclass members that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

88. First, because Defendants did not accurately record the time Plaintiff and Subclass members spent working off the clock, Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff and Subclass members in compliance with section 226(a)(1) and 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours worked by Plaintiff and Subclass members in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and corresponding accurate number of work hours worked at each hourly rate in violation of section 226(a)(9).

89. Second, because Defendants did not calculate Plaintiff's and

1 Subclass members' regular rate of pay correctly for purposes of paying overtime,
2 Defendants did not list the correct amount of gross wages earned by Plaintiff and
3 Subclass members in compliance with section 226(a)(1). For the same reason,
4 Defendants failed to list the correct amount of net wages earned by Plaintiff and
5 Subclass members in violation of section 226(a)(5). Defendants also failed to
6 correctly list all applicable hourly rates in effect during the pay period, namely,
7 correct overtime rates of pay and correct rates of pay for premium wages, in
8 violation of section 226(a)(9).

9 90. The wage statement deficiencies also include, without limitation,
10 failing to list the number of piece-rate units earned and any applicable piece rate
11 if the employee is paid on a piece-rate basis; failing to list all deductions; failing
12 to list the name of the employee and only the last four digits of his or her social
13 security number or an employee identification number other than a social
14 security number; failing to list the name and address of the legal entity that is the
15 employer; failing to list the inclusive dates of the period for which class
16 members were paid; and/or failing to state all hours worked as a result of not
17 recording or stating hours worked off-the-clock.

18 91. California Labor Code section 1198 provides that the maximum
19 hours of work and the standard conditions of labor shall be those fixed by the
20 Labor Commissioner and as set forth in the applicable IWC Wage Orders.
21 Section 1198 further provides that "[t]he employment of any employees for
22 longer hours than those fixed by the order or under conditions of labor prohibited
23 by the order is unlawful." Pursuant to the applicable IWC Wage Order,
24 employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the
26 relevant time period, Defendants failed, on a company-wide basis, to keep
27 accurate records of work period and meal period start and stop times for Plaintiff
28 and Subclass members, in violation of section 1198. Furthermore, in light of

1 Defendants' failure to provide Plaintiff and Subclass members with second 30-
2 minute meal periods to which they were entitled, Defendants kept no records of
3 meal start and end times for second meal periods.

4 92. California Labor Code section 1174(d) provides that "[e]very person
5 employing labor in this state shall ... [k]eep a record showing the names and
6 addresses of all employees employed and the ages of all minors" and "[k]eep, at
7 a central location in the state or at the plants or establishments at which
8 employees are employed, payroll records showing the hours worked daily by and
9 the wages paid to, and the number of piece-rate units earned by and any
10 applicable piece rate paid to, employees employed at the respective plants or
11 establishments" At all relevant times, and in violation of Labor Code
12 section 1174(d), Defendants willfully failed to maintain accurate payroll records
13 for Plaintiff and Subclass members showing the daily hours they worked and the
14 wages paid thereto as a result of failing to record the off-the-clock hours that
15 they worked.

16 93. Plaintiff and Subclass members are entitled to recover from
17 Defendants the greater of their actual damages caused by Defendants' failure to
18 comply with California Labor Code section 226(a), or an aggregate penalty not
19 exceeding four thousand dollars (\$4,000) per employee.

20 SIXTH CAUSE OF ACTION

21 Violation of California Labor Code § 227.3—Failure to Pay All Vested 22 Vacation Time and Paid Time Off Upon Termination 23 (Against all Defendants)

24 94. Plaintiff incorporates by reference and re-alleges as if fully stated
25 herein each and every allegation set forth above.

26 95. At all relevant times herein set forth, California Labor Code section
27 227.3 provides that whenever a contract of employment or employer policy
28 provides for paid vacations, and an employee is terminated without having taken

his or her vested vacation time, all vested vacation shall be paid to him or her as wages at his or her final rate in accordance with such contract of employment or employer policy respecting eligibility or time served.

96. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all vested vacation wages that were owed to them at the end of their employment. For example, upon information and belief, Defendants paid Plaintiff only eight (8) hours of his total 48 hours of unused vested vacation wages due.

97. Defendants' failure to pay Plaintiff and class members who are no longer employed by Defendants all vested vacation wages at the end of their employment caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Accordingly, Plaintiff and class members are entitled to recover from Defendants their unpaid vested vacation wages due to them, plus interest.

SEVENTH CAUSE OF ACTION

Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon Termination (Against all Defendants)

98. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

99. This cause of action is dependent upon, and wholly derivative of, the overtime wages, minimum wages, and/or meal and rest period premium wages that were not timely paid to Plaintiff and those class members no longer employed by Defendants upon their termination.

100. At all times relevant herein set forth, Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an

1 employee voluntarily leaves his or her employment, his or her wages shall
2 become due and payable not later than seventy-two (72) hours thereafter, unless
3 the employee has given seventy-two (72) hours previous notice of his or her
4 intention to quit, in which case the employee is entitled to his or her wages at the
5 time of quitting.

6 101. Defendants willfully failed to pay Plaintiff and class members who
7 are no longer employed by Defendants the earned and unpaid wages set forth
8 above, including but not limited to, overtime wages, minimum wages, meal and
9 rest period premium wages, and/or all vested vacation wages, either at the time
10 of discharge, or within seventy-two (72) hours of their leaving Defendants'
11 employ.

12 102. Defendants' failure to pay Plaintiff and class members who are no
13 longer employed by Defendants their wages earned and unpaid at the time of
14 discharge, or within seventy-two (72) hours of their leaving Defendants' employ,
15 violates Labor Code sections 201 and 202. Plaintiff and class members are
16 therefore entitled to recover from Defendants the statutory penalty wages for
17 each day they were not paid, at their regular rate of pay, up to a thirty (30) day
18 maximum pursuant to California Labor Code section 203.

19 EIGHTH CAUSE OF ACTION

20 Violation of California Labor Code § 204—Failure to Timely Pay Wages 21 During Employment 22 (Against all Defendants)

23 103. Plaintiff incorporates by reference and re-alleges as if fully stated
24 herein each and every allegation set forth above.

25 104. This cause of action is dependent upon, and wholly derivative of,
26 the overtime wages, minimum wages, and/or meal and rest period premium
27 wages, that were not timely paid to Plaintiff and those class members.

28 105. At all times relevant herein set forth, Labor Code section 204

1 provides that all wages earned by any person in any employment between the
2 first (1st) and the fifteenth (15th) days, inclusive, of any calendar month, other
3 than those wages due upon termination of an employee, are due and payable
4 between the sixteenth (16th) and the twenty-sixth (26th) day of the month during
5 which the labor was performed.

6 106. At all times relevant herein, Labor Code section 204 provides that
7 all wages earned by any person in any employment between the sixteenth (16th)
8 and the last day, inclusive, of any calendar month, other than those wages due
9 upon termination of an employee, are due and payable between the first (1st) and
10 the tenth (10th) day of the following month.

11 107. At all times relevant herein, Labor Code section 204 provides that
12 all wages earned for labor in excess of the normal work period shall be paid no
13 later than the payday for the next regular payroll period. Alternatively, at all
14 times relevant herein, Labor Code section 204 provides that the requirements of
15 this section are deemed satisfied by the payment of wages for weekly, biweekly,
16 or semimonthly payroll if the wages are paid not more than seven (7) calendar
17 days following the close of the payroll period.

18 108. During the relevant time period, Defendants willfully failed to pay
19 Plaintiff and class members all wages due including, but not limited to, overtime
20 wages, minimum wages, and meal and rest period premium wages, within the
21 time periods specified by California Labor Code section 204.

22 109. Defendants' failure to pay Plaintiff and class members all wages due
23 violates Labor Code section 204. Plaintiff and class members are therefore
24 entitled to recover from Defendants the statutory penalty wages pursuant to
25 California Labor Code section 210.

26 **NINTH CAUSE OF ACTION**

27 **Violation of California Labor Code § 2802—Unpaid Business-Related** 28 **Expenses**

(Against all Defendants)

110. Plaintiff incorporates by reference and re-alleges as if fully stated herein each and every allegation set forth above.

111. At all times herein set forth, California Labor Code section 2802 provides that an employer must reimburse employees for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

112. First, during the relevant time period, Defendants, on a company-wide basis, mandated that Plaintiff and class members purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Plaintiff and class members purchased steel-toed boots to wear inside Defendants' facilities, but were not reimbursed fully for these costs.

113. Second, Defendants had a company-wide policy of requiring Plaintiff and class members to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. Defendants maintained and implemented a company-wide policy of requiring employees to travel to a medical facility using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, Defendants were in control of

1 scheduling the date and time for the testing and/or physical examinations,
2 selecting the provider or facility where the testing and/or physical examinations
3 were to take place, and determining the scope of the testing and/or physical
4 examinations. Defendants gave Plaintiff and class members strict instructions to
5 obtain drug testing and/or physical examinations, and Plaintiff and class
6 members underwent the testing and/or physical examinations for the sole benefit
7 of Defendants. For example, Plaintiff followed Defendants' instructions,
8 traveled 6-8 miles roundtrip in his personal vehicle, and underwent Defendants'
9 drug testing, but was not reimbursed for his mileage to and from the medical
10 facility. Although Defendants required Plaintiff and class members to undergo
11 drug testing, Defendants never reimbursed them for all of their travel expenses.

12 114. Defendants could have provided Plaintiff and class members with
13 the actual tools for use on the job, such as steel-toed boots or company vehicles,
14 or Defendants could have fully reimbursed employees for the costs of steel-toed
15 boots, travel expenses, and mileage. Instead, Defendants passed these operating
16 costs off onto Plaintiff and class members. At all relevant times, Plaintiff did not
17 earn at least two (2) times the minimum wage.

18 115. Defendants' company-wide policy and/or practice of passing on
19 their operating costs to Plaintiff and class members violates California Labor
20 Code section 2802. Defendants have intentionally and willfully failed to
21 reimburse Plaintiff and other class members for necessary business-related
22 expenses and costs.

23 116. Plaintiff and class members are entitled to recover from Defendants
24 their business-related expenses incurred during the course and scope of their
25 employment, plus interest.

26 TENTH CAUSE OF ACTION

27 **For Civil Penalties Pursuant to California Labor Code §§ 2698, *et seq.***
28 **(Against all Defendants)**

1 117. Plaintiff incorporates by reference and re-alleges as if fully stated
2 herein each and every allegation set forth above.

3 118. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff
4 to recover civil penalties for the violation(s) of the Labor Code sections
5 enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor
6 Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a),
7 1174(d), 1194, 1197, 1197.1, 1198, and 2802. Labor Code section 2699.3(c)
8 permits aggrieved employees, including Plaintiff, to recover civil penalties for
9 violations of those Labor Code sections not found in section 2699.5, including
10 sections 516, 1182.12, 6401, and 6403.

11 119. Defendants’ conduct, as alleged herein, violates numerous sections
12 of the California Labor Code, including, but not limited to, the following:

- 13 (a) Violation of Labor Code sections 510, 1198, and the
14 applicable IWC wage order for Defendants’ failure to
15 compensate Plaintiff and other aggrieved employees with all
16 required overtime pay and failure to properly calculate the
17 overtime rates paid to Plaintiff and other aggrieved
18 employees, as set forth below;
- 19 (b) Violation of Labor Code sections 1182.12, 1194, 1197,
20 1197.1, 1198, and the applicable IWC wage order for
21 Defendants’ failure to compensate Plaintiff and other
22 aggrieved employees with at least minimum wages for all
23 hours worked, as alleged herein;
- 24 (c) Violation of Labor Code sections 226.7, 512, 516, 1198, and
25 the applicable IWC wage order for Defendants’ failure to
26 provide Plaintiff and other aggrieved employees with meal
27 periods, as alleged herein;
- 28 (d) Violation of Labor Code sections 226.7, 516, 1198, and the

1 applicable IWC wage order for Defendants' failure to
2 authorize and permit Plaintiff and other aggrieved employees
3 to take rest periods, as alleged herein;

4 (e) Violation of Labor Code sections 226(a), 1198, and the
5 applicable IWC wage order for failure to provide accurate and
6 complete wage statements to Plaintiff and other aggrieved
7 employees, as alleged herein;

8 (f) Violation of Labor Code sections 1174(d), 1198, and the
9 applicable IWC wage order for failure to maintain payroll
10 records as alleged herein;

11 (g) Violation of Labor Code section 227.3 for failure to pay
12 Plaintiff and other aggrieved employees all vested vacation
13 time upon termination as set forth below, as alleged herein;

14 (h) Violation of Labor Code sections 201, 202, and 203 for
15 failure to pay all earned wages upon termination, as alleged
16 herein;

17 (i) Violation of Labor Code section 204 for failure to pay all
18 earned wages during employment, as alleged herein;

19 (j) Violation of Labor Code section 222.5 for failure to
20 compensate Plaintiff and/or other aggrieved employees for
21 mandatory physical examinations and/or drug testing as set
22 forth below;

23 (k) Violation of Labor Code section 2802 for failure to reimburse
24 Plaintiff and other aggrieved employees for all business
25 expenses necessarily incurred, as alleged herein; and

26 (l) Violation of Labor Code sections 6401 and 6403 for failure to
27 provide safety devices and safeguards, such as personal
28 protective equipment, to Plaintiff and other aggrieved

1 employees, as set forth below.

2 120. At all relevant times herein, California Labor Code section 222.5
3 requires employers to pay for the costs an employee incurs for obtaining any
4 medical or physical examination taken.

5 121. At all times relevant herein, Defendants implemented, on a
6 company-wide basis, an employer-imposed requirement that Plaintiff and/or
7 other aggrieved employees undergo a mandatory physical examination and/or
8 drug test, but required them to do so at their own expense. As stated, Defendants
9 had a company-wide policy requiring that all employees, including Plaintiff
10 and/or other aggrieved employees, travel to a specified medical facility using
11 their own personal vehicles to undergo physical examinations and/or drug
12 testing. At all times, Defendants were in control of scheduling the date and time
13 for the examination and/or testing, selecting the provider/facility where the
14 examination and/or testing was to take place, and determining the scope of the
15 examination and/or testing.

16 122. However, Defendants did not reimburse Plaintiff and/or other
17 aggrieved employees for the travel expenses they incurred getting to and from
18 the medical facilities. Defendants' policy and/or practice of not paying for all
19 costs Plaintiff and/or other aggrieved employees incurred obtaining mandatory
20 drug tests and/or physical examinations violates California Labor Code section
21 222.5. Plaintiff and/or other aggrieved employees are therefore entitled to
22 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

23 123. At all times herein set forth, California Labor Code section 6401
24 provides that employers must furnish and use safety devices and safeguards, and
25 adopt and use practices, means, methods, operations, and processes which are
26 reasonably adequate to render the employment and place of employment safe
27 and healthy. California Labor Code Section 6401 further provides that an
28 employer must to everything reasonably necessary to protect the life, safety and

1 health of its employees. California Labor Code section 6403(a) requires that
 2 employers provide and use safety devices and safeguards reasonably adequate to
 3 render the employment and place of employment safe.

4 124. Defendants, on a company-wide basis, failed to provide Plaintiff and
 5 other aggrieved employees with personal protective equipment, such as steel-
 6 toed boots, to keep them safe in the workplace. Despite the fact that Defendants
 7 required employees to wear certain personal protective equipment, including
 8 steel-toed boots, Defendants failed to provide such reasonably necessary
 9 equipment to Plaintiff and other aggrieved employees to keep them safe.

10 125. Defendants' failure to provide Plaintiff and other aggrieved
 11 employees with safety devices and safeguards for the workplace violates Labor
 12 Code sections 6401 and 6403. Plaintiff and other aggrieved employees are
 13 therefore entitled to recover civil penalties pursuant to Labor Code sections
 14 2699(a), (f), and (g).

15 **ELEVENTH CAUSE OF ACTION**

16 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

17 **Unlawful Business Practices**

18 **(Against all Defendants)**

19 126. Plaintiff incorporates by reference and re-alleges as if fully stated
 20 herein each and every allegation set forth above.

21 127. Defendants are "persons" as defined by California Business &
 22 Professions Code sections 17201, as they are corporations, firms, partnerships,
 23 joint stock companies, and/or associations.

24 128. Defendants' conduct, as alleged herein, has been, and continues to
 25 be, unfair, unlawful and harmful to Plaintiff, class members, and to the general
 26 public. Plaintiff has suffered injury in fact and has lost money as a result of
 27 Defendants' unlawful business practices. Plaintiff seeks to enforce important
 28 rights affecting the public interest within the meaning of Code of Civil Procedure

1 section 1021.5.

2 129. Defendants' activities, as alleged herein, are violations of California
3 law, and constitute unlawful business acts and practices in violation of California
4 Business & Professions Code sections 17200, *et seq.*

5 130. A violation of California Business & Professions Code sections
6 17200, *et seq.* may be predicated on the violation of any state or federal law. In
7 the instant case, Defendants' policies and practices have violated state law in at
8 least the following respects:

- 9 (a) Requiring non-exempt, hourly paid employees, including
10 Plaintiff and class members, to work overtime without paying
11 them proper compensation in violation of California Labor
12 Code sections 510 and 1198 and the applicable IWC Order,
13 and paying Plaintiff and class members overtime at a lower
14 rate than required by law by failing to properly calculate the
15 regular rate of pay for purposes of overtime, as alleged herein;
- 16 (b) Failing to pay at least minimum wage to Plaintiff and class
17 members in violation of California Labor Code sections
18 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable
19 IWC Order, as alleged herein;
- 20 (c) Failing to provide uninterrupted meal periods to Plaintiff and
21 class members in violation of California Labor Code sections
22 226.7, 512(a), 516, 1198, and the applicable IWC Order, as
23 alleged herein;
- 24 (d) Failing to authorize and permit Plaintiff and class members to
25 take uninterrupted rest periods in violation of California
26 Labor Code sections 226.7, 516, 1198, and the applicable
27 IWC Order, as alleged herein;
- 28 (e) Failing to provide Plaintiff and class members with accurate

1 wage statements and failing to maintain accurate payroll
2 records in violation of California Labor Code sections 226(a),
3 1174(d), 1198, and the applicable IWC Order, as alleged
4 herein;

5 (f) Failing to pay all vested vacation wages to Plaintiff and class
6 members in violation of California Labor Code 227.3, as
7 alleged herein;

8 (g) Failing timely to pay all earned wages to Plaintiff and class
9 members in violation of California Labor Code section 204
10 and the applicable IWC Order, as alleged herein;

11 (h) Failing to pay Plaintiff and class members the costs of
12 mandatory physical examinations and/or drug testing in
13 violation of California Labor Code section 222.5, as set forth
14 below;

15 (i) Failing to reimburse Plaintiff and class members for all
16 business expenses necessarily incurred in violation of
17 California Labor Code sections 2802, as alleged herein; and

18 (j) Failing to provide Plaintiff and class members with safety
19 devices and safeguards, such as personal protective
20 equipment, in violation of California Labor Code sections
21 6401 and 6403, as set forth below.

22 131. At all relevant times herein, California Labor Code section 222.5
23 requires employers to pay for the costs an employee incurs for obtaining any
24 medical or physical examination taken.

25 132. At all times relevant herein, Defendants implemented, on a
26 company-wide basis, an employer-imposed requirement that Plaintiff and class
27 members undergo a mandatory physical examination and/or drug test, upon
28 hiring, but required them to do so at their own expense. As stated, Defendants

1 had a company-wide policy requiring that all employees, including Plaintiff and
2 class members, travel to a specified medical facility using their own personal
3 vehicles to undergo physical examinations and/or drug testing. At all times,
4 Defendants were in control of scheduling the date and time for the examination
5 and/or testing, selecting the provider/facility where the examination and/or
6 testing was to take place, and determining the scope of the examination and/or
7 testing.

8 133. During the relevant time period, Plaintiff was instructed by
9 Defendants to travel to a medical facility and obtain a drug test. Plaintiff
10 followed Defendants' instructions, traveled to the facility Defendants selected,
11 and underwent the testing. Plaintiff was required to travel approximately 6-8
12 miles roundtrip to and from a medical facility selected by Defendants using his
13 own vehicle.

14 134. However, Defendants did not reimburse Plaintiff and class members
15 for the travel expenses they incurred getting to and from the medical facilities.
16 Defendants' policy and/or not paying for all costs Plaintiff and class members
17 incurred obtaining mandatory physical examinations and/or drug testing is in
18 violation of California Labor Code section 222.5.

19 135. At all relevant times herein, California Labor Code section 6401
20 provides that employers must furnish and use safety devices and safeguards, and
21 adopt and use practices, means, methods, operations, and processes which are
22 reasonably adequate to render the employment and place of employment safe
23 and healthy. California Labor Code Section 6401 further provides that an
24 employer must do everything reasonably necessary to protect the life, safety and
25 health of its employees. California Labor Code section 6403(a) requires that
26 employers provide and use safety devices and safeguards reasonably adequate to
27 render the employment and place of employment safe.

28 136. Defendants, on a company-wide basis, failed to provide Plaintiff and

1 class members with personal protective equipment, such as steel-toed boots, to
2 keep them safe in the workplace. Despite the fact that Defendants required
3 employees to wear certain personal protective equipment, including steel-toed
4 boots, Defendants failed to provide such reasonably necessary equipment to
5 Plaintiff and class members to keep them safe. Thus, Defendants' failure to
6 provide Plaintiff and class members with safety devices and safeguards for the
7 workplace violates Labor Code sections 6401 and 6403.

8 137. As a result of the violations of California law herein described,
9 Defendants unlawfully gained an unfair advantage over other businesses.
10 Plaintiff and class members have suffered pecuniary loss by Defendants'
11 unlawful business acts and practices alleged herein.

12 138. Pursuant to California Business & Professions Code sections 17200
13 *et seq.*, Plaintiff and class members are entitled to restitution of the wages
14 withheld and retained by Defendants during a period that commences four years
15 prior to the filing of this complaint; a permanent injunction requiring Defendants
16 to pay all outstanding wages due to Plaintiff and class members; and an award of
17 attorneys' fees pursuant to California Code of Civil Procedure section 1021.5
18 and other applicable laws; and an award of costs.

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23 **TWELFTH CAUSE OF ACTION**

24 **Violation of California Business & Professions Code §§ 17200, *et seq.* –** 25 **Unfair Business Practices** 26 **(Against all Defendants)**

27 139. Plaintiff incorporates by reference and re-alleges as if fully stated
28 herein each and every allegation set forth above.

1 140. Defendants are “persons” as defined by California Business &
2 Professions Code sections 17201, as they are corporations, firms, partnerships,
3 joint stock companies, and/or associations.

4 141. Defendants’ conduct, as alleged herein, has been, and continues to
5 be, unfair, and harmful to Plaintiff, class members, and to the general public.
6 Plaintiff has suffered injury in fact and has lost money as a result of Defendants’
7 unfair business practices. Plaintiff seeks to enforce important rights affecting the
8 public interest within the meaning of Code of Civil Procedure section 1021.5.

9 142. Defendants’ activities, namely Defendants’ company-wide practice
10 and/or policy of not paying Plaintiff and class members all meal and rest period
11 premium wages due to them under Labor Code section 226.7, deprived Plaintiff
12 and class members of the compensation guarantee and enhanced enforcement
13 implemented by section 226.7. The statutory remedy provided by section 226.7
14 is a “‘dual-purpose’ remedy intended primarily to compensate employees, and
15 secondarily to shape employer conduct. *Safeway, Inc. v. Superior Court*, 238
16 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
17 guaranteed to Plaintiff and class members as part of their employment with
18 Defendants, and thus Defendants’ practice and/or policy of denying these
19 statutory benefits constitutes an unfair business practice in violation of California
20 Business & Professions Code sections 17200, *et seq.* (Id.)

21 143. A violation of California Business & Professions Code sections
22 17200, *et seq.* may be predicated on any unfair business practice. In the instant
23 case, Defendants’ policies and practices have violated the spirit of California’s
24 meal and rest break laws and constitute acts against the public policy behind
25 these laws.

26 144. Pursuant to California Business & Professions Code sections 17200
27 *et seq.*, Plaintiff and class members are entitled to restitution for the class-wide
28 loss of the statutory benefits implemented by section 226.7 withheld and retained

1 by Defendants during a period that commences four years prior to the filing of
2 this complaint; a permanent injunction requiring Defendants to pay all statutory
3 benefits implemented by section 226.7 due to Plaintiff and class members; an
4 award of attorneys' fees pursuant to California Code of Civil Procedure section
5 1021.5 and other applicable laws; and an award of costs.

6 **REQUEST FOR JURY TRIAL**

7 Plaintiff requests a trial by jury.

8 **PRAYER FOR RELIEF**

9 Plaintiff, on behalf of all others similarly situated, prays for relief and
10 judgment against Defendants, jointly and severally, as follows:

11 1. For damages, unpaid wages, penalties, injunctive relief, and
12 attorneys' fees in excess of twenty-five thousand dollars (\$25,000), exclusive of
13 interest and costs. Plaintiff reserves the right to amend his prayer for relief to
14 seek a different amount.

15 **Class Certification**

- 16 2. That this case be certified as a class action;
17 3. That Plaintiff be appointed as the representative of the Class and
18 Subclass;
19 4. That counsel for Plaintiff be appointed as class counsel.

20 **As to the First Cause of Action**

21 5. That the Court declare, adjudge, and decree that Defendants violated
22 California Labor Code sections 510 and 1198 and applicable IWC Wage Orders
23 by willfully failing to pay all overtime wages due to Plaintiff and class members;

24 6. For general unpaid wages at overtime wage rates and such general
25 and special damages as may be appropriate;

26 7. For pre-judgment interest on any unpaid overtime compensation
27 commencing from the date such amounts were due, or as otherwise provided by
28 law;

1 8. For reasonable attorneys' fees and for costs of suit incurred herein
2 pursuant to California Labor Code section 1194(a); and

3 9. For such other and further relief as the Court may deem equitable
4 and appropriate.

5 **As to the Second Cause of Action**

6 10. That the Court declare, adjudge and decree that Defendants violated
7 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by
8 willfully failing to pay minimum wages to Plaintiff and class members;

9 11. For general unpaid wages and such general and special damages as
10 may be appropriate;

11 12. For pre-judgment interest on any unpaid compensation from the date
12 such amounts were due, or as otherwise provided by law;

13 13. For reasonable attorneys' fees and for costs of suit incurred herein
14 pursuant to California Labor Code section 1194(a);

15 14. For liquidated damages pursuant to California Labor Code section
16 1194.2; and

17 15. For such other and further relief as the Court may deem equitable
18 and appropriate.

19 **As to the Third Cause of Action**

20 16. That the Court declare, adjudge, and decree that Defendants violated
21 California Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC
22 Wage Order(s) by willfully failing to provide all meal periods to Plaintiff and
23 class members;

24 17. That the Court make an award to the Plaintiff and class members of
25 one (1) hour of pay at each employee's regular rate of pay for each workday that
26 a meal period was not provided;

27 18. For all actual, consequential, and incidental losses and damages,
28 according to proof;

1 19. For premiums pursuant to California Labor Code section 226.7(b);

2 20. For pre-judgment interest on any unpaid meal period premiums
3 from the date such amounts were due, or as otherwise provided by law;

4 21. For attorneys' fees pursuant to California Code of Civil Procedure
5 section 1021.5, or as otherwise provided by law; and

6 22. For such other and further relief as the Court may deem equitable
7 and appropriate.

8 **As to the Fourth Cause of Action**

9 23. That the Court declare, adjudge and decree that Defendants violated
10 California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage
11 Orders by willfully failing to authorize and permit Plaintiff and class members to
12 take all rest periods;

13 24. That the Court make an award to the Plaintiff and class members of
14 one (1) hour of pay at each employee's regular rate of pay for each workday that
15 a rest period was not authorized and permitted;

16 25. For all actual, consequential, and incidental losses and damages,
17 according to proof;

18 26. For premiums pursuant to California Labor Code section 226.7(b);

19 27. For pre-judgment interest on any unpaid rest period premiums from
20 the date such amounts were due, or as otherwise provided by law;

21 28. For attorneys' fees pursuant to California Code of Civil Procedure
22 section 1021.5, or as otherwise provided by law; and

23 29. For such other and further relief as the Court may deem equitable
24 and appropriate.

25 **As to the Fifth Cause of Action**

26 30. That the Court declare, adjudge and decree that Defendants violated
27 the recordkeeping provisions of California Labor Code section 226(a) and
28 applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully

1 failed to provide accurate itemized wage statements thereto;

2 31. For all actual, consequential, and incidental losses and damages,
3 according to proof;

4 32. For injunctive relief pursuant to California Labor Code section
5 226(h);

6 33. For statutory penalties pursuant to California Labor Code section
7 226(e);

8 34. For attorneys' fees and costs pursuant to California Labor Code
9 section 226(e)(1); and

10 35. For such other and further relief as the Court may deem equitable
11 and appropriate.

12 **As to the Sixth Cause of Action**

13 36. That the Court declare, adjudge and decree that Defendants violated
14 California Labor Code section 227.3 by willfully failing to pay vested vacation
15 wages owed at the time of termination of the employment of Plaintiff and other
16 terminated class members;

17 37. For all actual, consequential and incidental losses and damages,
18 according to proofs;

19 38. For prejudgment interest on any unpaid wages from the date of such
20 amounts were due, or as otherwise provided by law

21 39. For attorneys' fees pursuant to California Code of Civil Procedure
22 section 1021.5, or as otherwise provided by law; and

23 40. For such other and further relief as the Court may deem equitable
24 and appropriate.

25 **As to the Seventh Cause of Action**

26 41. That the Court declare, adjudge and decree that Defendants violated
27 California Labor Code sections 201 and 202 by willfully failing to pay overtime
28 wages, minimum wages, meal and rest period premiums, and/or all vested

1 vacation wages owed at the time of termination of the employment of Plaintiff
2 and other terminated class members;

3 42. For all actual, consequential and incidental losses and damages,
4 according to proof;

5 43. For waiting time penalties according to proof pursuant to California
6 Labor Code section 203 for all employees who have left Defendants' employ;

7 44. For pre-judgment interest on any unpaid wages from the date such
8 amounts were due, or as otherwise provided by law;

9 45. For attorneys' fees pursuant to California Code of Civil Procedure
10 section 1021.5, or as otherwise provided by law; and

11 46. For such other and further relief as the Court may deem equitable
12 and appropriate.

13 **As to the Eighth Cause of Action**

14 47. That the Court declare, adjudge and decree that Defendants violated
15 California Labor Code section 204 by willfully failing to timely pay Plaintiff and
16 class members overtime wages, minimum wages, and/or meal and rest period
17 premiums during their employment;

18 48. For all actual, consequential and incidental losses and damages,
19 according to proof;

20 49. For statutory penalties according to proof pursuant to California
21 Labor Code section 210;

22 50. For pre-judgment interest on any unpaid wages from the date such
23 amounts were due, or as otherwise provided by law;

24 51. For attorneys' fees pursuant to California Code of Civil Procedure
25 section 1021.5, or as otherwise provided by law; and

26 52. For such other and further relief as the Court may deem equitable
27 and appropriate.

28 **As to the Ninth Cause of Action**

1 devices and safeguards);

2 60. For civil penalties pursuant to California Labor Code sections 210,
3 226.3, 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of
4 California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3,
5 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and
6 6403;

7 61. For attorneys' fees and costs pursuant to California Labor Code
8 section 2699(g)(1), and any and all other relevant statutes, for Defendant's
9 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a),
10 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198,
11 2802, 6401, and 6403;

12 62. For pre-judgment and post-judgment interest as provided by law;
13 and

14 63. For such other and further relief as the Court may deem equitable
15 and appropriate.

16 **As to the Eleventh Cause of Action**

17 64. That the Court declare, adjudge and decree that Defendants' conduct
18 of failing to provide Plaintiff and class members all overtime wages due to them,
19 failing to provide Plaintiff and class members all minimum wages due to them,
20 failing to provide Plaintiff and class members all meal periods, failing to
21 authorize and permit Plaintiff and class members to take all rest periods, failing
22 to provide Plaintiff and class members accurate and complete wage statements,
23 failing to maintain accurate payroll records for Plaintiff and class members,
24 failing to pay all vested vacation wages, failing timely to pay Plaintiff and class
25 members all earned wages during employment, failing to reimburse Plaintiff and
26 class members for the costs of mandatory drug testing and/or physical
27 examinations, failing to reimburse Plaintiff and class members for business-
28 related expenses, and failing to provide Plaintiff and class members with safety

1 devices and safeguards, constitutes an unlawful business practice in violation of
2 California Business and Professions Code sections 17200, *et seq.*;

3 65. For restitution of unpaid wages to Plaintiff and all class members
4 and prejudgment interest from the day such amounts were due and payable;

5 66. For the appointment of a receiver to receive, manage and distribute
6 any and all funds disgorged from Defendants and determined to have been
7 wrongfully acquired by Defendants as a result of violations of California
8 Business & Professions Code sections 17200 *et seq.*;

9 67. For reasonable attorneys' fees and costs of suit incurred herein
10 pursuant to California Code of Civil Procedure section 1021.5; and

11 68. For such other and further relief as the Court may deem equitable
12 and appropriate.

13 **As to the Twelfth Cause of Action**

14 69. That the Court declare, adjudge and decree that Defendants' conduct
15 of denying Plaintiff and class members the statutory benefits guaranteed under
16 section 226.7 constitutes an unfair business practice in violation of California
17 Business and Professions Code sections 17200, *et seq.*;

18 70. For restitution of the statutory benefits under section 226.7 unfairly
19 withheld from Plaintiff and class members and prejudgment interest from the day
20 such amounts were due and payable;

21 71. For the appointment of a receiver to receive, manage and distribute
22 any and all funds disgorged from Defendants and determined to have been
23 wrongfully acquired by Defendants as a result of violations of California
24 Business & Professions Code sections 17200 *et seq.*;

25 72. For reasonable attorneys' fees and costs of suit incurred herein
26 pursuant to California Code of Civil Procedure section 1021.5;

27 73. For pre-judgment and post-judgment interest as provided by law;
28 and

1 74. For such other and further relief as the Court may deem equitable
2 and appropriate.

3
4 Dated: April 28, 2021

Respectfully submitted,
Capstone Law APC

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6
7 By: /s/ Mark Ozzello

Mark Ozzello
Brandon Brouillette
Joseph Hakakian

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10 Attorneys for Plaintiff Mark Wilson
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EXHIBIT 1



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

May 28, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Mark Wilson v. PACTIV LLC*

Dear PAGA Administrator:

This office represents Mark Wilson in connection with his claims under the California Labor Code. Mr. Wilson was an employee of PACTIV LLC ("PACTIV").

The employer may be contacted directly at the address below:

PACTIV LLC
1900 W. FIELD COURT
LAKE FOREST IL 60045

Mr. Wilson intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Wilson seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PACTIV as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PACTIV employed Mr. Wilson as an hourly paid, non-exempt employee from approximately August 2017 to March 2020. Mr. Wilson worked for PACTIV as a Lift Truck Operator at its location in San Bernardino, California. During his employment, Mr. Wilson typically worked eight (8) or more per day, and five (5) days per week. At the time Mr. Wilson's employment with PACTIV ended, he earned approximately \$17.85 per hour. His job duties included, without limitation, operating a forklift to unload and load trailers, transporting and organizing product, and forming and packaging pallets.

PACTIV committed one or more of the following Labor Code violations against Mr. Wilson, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

PACTIV’s Company-Wide and Uniform Payroll and HR Practices

PACTIV LLC is a Delaware limited liability company, and is the leading manufacturer and distributor of food and beverage packaging and food service products in North America. PACTIV operates at least seven (7) manufacturing plants in California. Upon information and belief, PACTIV maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lake Forest, Illinois, for all non-exempt, hourly paid employees working for PACTIV in California, including Mr. Wilson and other aggrieved employees. At all relevant times, PACTIV issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Wilson and other aggrieved employees, regardless of its location or position.

Upon information and belief, PACTIV maintains a centralized Payroll department at its corporate headquarters in Lake Forest, Illinois, which processes payroll for all non-exempt, hourly paid employees working for PACTIV in California, including Mr. Wilson and other aggrieved employees. Further, PACTIV issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Wilson and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, PACTIV utilized the same methods and formulas when calculating wages due to Mr. Wilson and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PACTIV willfully failed to pay all overtime wages owed to Mr. Wilson and other aggrieved employees. During the relevant time period, Mr. Wilson and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Wilson’s experience and counsel’s review of those records currently available relating to Mr. Wilson’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Wilson reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, PACTIV had, and continues to have, a company-wide policy and/or practice of discouraging and impeding Mr. Wilson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, resulting in a failure to account for all of the time Mr. Wilson and other aggrieved employees worked. For example, PACTIV pressured Mr. Wilson to clock in up to seven (7) minutes before the start of his scheduled shift and begin working, but, on information and belief, PACTIV timekeeping system adjusted his clock-in time to his scheduled start time. Thus, PACTIV failed to track this time spent working before scheduled shifts, and Mr. Wilson and other aggrieved employees received no compensation for this time.

During the relevant period, PACTIV also had, and continues to have, a company-wide policy and/or practice of understaffing its facilities while simultaneously assigning heavy workloads. PACTIV's company-wide understaffing of its facilities prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, other aggrieved employees missed meal periods and/or had their meal periods interrupted, but were not compensated for this time.

PACTIV knew or should have known that as a result of these company-wide practices and/or policies, Mr. Wilson and other aggrieved employees were working after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Wilson and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Wilson and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, PACTIV did not pay Mr. Wilson and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, PACTIV paid Mr. Wilson and other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, PACTIV failed to incorporate all compensation, including, but not limited to, all incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Wilson and other aggrieved employees worked overtime and received these other forms of pay, PACTIV failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, PACTIV paid Mr. Wilson and other aggrieved employees nondiscretionary bonuses or incentive pay for identifying and reporting unsafe conditions in the workplace or for meeting certain performance or productivity-related metrics. On information and belief, these nondiscretionary bonuses and/or incentive pay were listed on Mr. Wilson's and other aggrieved employees' wage statements as "SAFETY INCENT," "NONCASH AWD," "AWARD," "GAIN SHARING," and "GIFT CARD." During pay periods that Mr. Wilson and other aggrieved employees were paid overtime and double time wages, PACTIV failed to incorporate the nondiscretionary bonus and/or incentive pay into Mr. Wilson's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, PACTIV paid Mr. Wilson and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. PACTIV's failure to properly calculate the overtime and double time rates

of pay based on all remuneration paid has resulted in an underpayment of overtime and double time wages to Mr. Wilson and other aggrieved employees on a company-wide basis.

Mr. Wilson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

As set forth above, as a result of PACTIV's policy discouraging and impeding Mr. Wilson and other aggrieved employees from recording hours worked that were outside of their scheduled shifts, Mr. Wilson and other aggrieved employees were required to perform work off-the-clock before their scheduled shift start times to complete assigned job duties. Also, as stated above, due to PACTIV's company-wide understaffing and resultant lack of meal period coverage, other aggrieved employees were forced to forego meal periods and/or had their meal periods interrupted by work.

Thus, PACTIV did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, PACTIV did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, PACTIV regularly failed to pay at least minimum wages to Mr. Wilson and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Wilson and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal and rest period and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional

hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (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.

As stated, PACTIV has, and continues to have, a company-wide policy and/or practice of understaffing while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of PACTIV's practices and/or policies, other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods.

In addition, during the relevant time period, PACTIV did not schedule second meal periods and had no policy for permitting Mr. Wilson and other aggrieved employees to take second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Mr. Wilson would work in excess of ten (10) hours per day, and was not provided his second meal period during these shifts. Mr. Wilson and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

PACTIV knew or should have known that as a result of policies, Mr. Wilson and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PACTIV further knew or should have known that it did not pay Mr. Wilson and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, PACTIV engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Wilson and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that PACTIV did pay Mr. Wilson and other aggrieved employees premium pay for missed, late, and interrupted meal periods, PACTIV did not pay Mr. Wilson and other aggrieved employees at the correct rate of pay for premium wages because PACTIV systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PACTIV failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Wilson and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, PACTIV regularly failed to authorize and permit Mr. Wilson and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. PACTIV had a company-wide policy and/or practice of failing to authorize and permit Mr. Wilson and other aggrieved employees to take third rest periods when they worked in excess of ten (10) hours in one day.

Furthermore, during the relevant time period, PACTIV maintained a company-wide on-premises rest period policy, which mandated that Mr. Wilson and other aggrieved employees remain on PACTIV’s premises during their rest periods. For example, PACTIV verbally told Mr. Wilson during his new-hire orientation that he could not leave PACTIV’s premises during his rest periods. Because Mr. Wilson and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, PACTIV effectively maintained control over Mr. Wilson and other aggrieved employees during rest periods.

As a result, Mr. Wilson and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Wilson did not receive a third rest period when working in excess of ten (10) hours.

PACTIV also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that PACTIV did pay Mr. Wilson and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, PACTIV did not pay Mr. Wilson and other aggrieved employees at the correct rate of pay for premium wages because PACTIV failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, PACTIV failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Wilson and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. PACTIV has not provided Mr. Wilson and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per

employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PACTIV has knowingly and intentionally provided Mr. Wilson and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PACTIV issued uniform wage statements to Mr. Wilson and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, PACTIV violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because PACTIV did not record the time Mr. Wilson and other aggrieved employees spent working off-the-clock, PACTIV did not list the correct amount of gross wages and net wages earned by Mr. Wilson and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PACTIV failed to accurately list the total number of hours worked by Mr. Wilson and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because PACTIV did not calculate Mr. Wilson's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, PACTIV did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, PACTIV also failed to list the correct amount of net wages in violation of section 226(a)(5). PACTIV also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall ... [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments..." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PACTIV willfully failed to maintain accurate payroll records for Mr. Wilson and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable

IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PACTIV failed, on a company-wide basis, to keep accurate records of work period and/or meal period start and stop times for Mr. Wilson and other aggrieved employees, in violation of section 1198. Furthermore, in light of PACTIV’s failure to provide Mr. Wilson and other aggrieved employees with second 30-minute meal periods to which they were entitled, PACTIV kept no records of meal start and end times for second meal periods.

Because PACTIV failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Wilson and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Wilson and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Wilson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee’s final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

During the relevant time period, PACTIV willfully failed to pay Mr. Wilson and other aggrieved employees all vested vacation wages that were owed to them at the end of their employment. For example, upon information and belief, PACTIV paid Mr. Wilson only eight (8) hours of his total 48 hours of unused vested vacation wages due.

PACTIV’s failure to pay Mr. Wilson and other aggrieved employees who are no longer employed by PACTIV all vested vacation wages at the end of their employment caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3. Accordingly, Mr. Wilson and other aggrieved employees are therefore entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following

month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PACTIV failed to pay Mr. Wilson and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Mr. Wilson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

PACTIV willfully failed to pay Mr. Wilson and other aggrieved employees who are no longer employed by PACTIV all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, reporting time pay, and/or all vested vacation wages, either at the time of discharge, or within seventy-two (72) hours of their leaving PACTIV's employment in violation of California Labor Code sections 201, 202, and 203.

Mr. Wilson and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, PACTIV implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory physical examination and/or drug test, upon hiring, but required them to do so at their own expense. PACTIV had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo physical examinations and/or drug testing. At all times, PACTIV were in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

However, PACTIV did not reimburse other aggrieved employees for the travel expenses they incurred getting to and from the medical facilities. PACTIV's policy and/or not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11010(5)(A) provides that “[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.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

During the relevant time period, PACTIV violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because PACTIV failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts but were put to work for less than half of the regular schedule. PACTIV had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shifts. Although other aggrieved employees would report to work based on the schedule that PACTIV provided to them, PACTIV would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by

the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, PACTIV, on a company-wide basis, mandated that Mr. Wilson and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Mr. Wilson and other aggrieved employees purchased steel-toed boots to wear inside PACTIV’s facilities, but were not reimbursed fully for these costs.

Second, PACTIV had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. For example, other aggrieved employees followed PACTIV’s instructions, traveled in their personal vehicles, and underwent PACTIV’s drug testing, but were not reimbursed for their mileage to and from the medical facility. Although PACTIV required other aggrieved employees to undergo drug testing, PACTIV never reimbursed them for all of their travel expenses.

PACTIV could have provided Mr. Wilson and/or other aggrieved employees with the actual tools for use on the job, such as steel-toed boots or company vehicles, or PACTIV could have fully reimbursed employees for the costs of steel-toed boots, travel expenses, and mileage. Instead, PACTIV passed these operating costs off onto Mr. Wilson and other aggrieved employees. At all relevant times, Mr. Wilson did not earn at least two (2) times the minimum wage.

Thus, PACTIV had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Wilson and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

PACTIV, on a company-wide basis, failed to provide Mr. Wilson and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that PACTIV required employees to wear certain personal protective equipment, including steel-toed boots, PACTIV failed to provide such reasonably necessary equipment to Mr. Wilson and other aggrieved employees to keep them safe.

PACTIV’s failure to provide Mr. Wilson and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Wilson and other

aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." PACTIV, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Wilson's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Wilson seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Wilson, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against PACTIV for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Wilson seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

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Best Regards,



Anthony Castillo

Copy: PACTIV LLC (via U.S. Certified Mail)