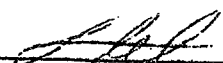


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FILED
 SUPERIOR COURT OF CALIFORNIA
 COUNTY OF SAN BERNARDINO
 SAN BERNARDINO DISTRICT

NOV 05 2020

BY 
 LILIANA MARISCAL, DEPUTY

Attorneys for Plaintiff Edward Morales Tellez,
 on behalf of himself and all others similarly situated

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

EDWARD MORALES TELLEZ, an individual,
 on behalf of himself and others similarly
 situated,

Plaintiff,

vs.

PICK-YOUR-PART AUTO WRECKAGE, a
 California corporation; and DOES 1 through 50,
 inclusive,

Defendants.

Case No. CIVDS2017040

Case Assigned for all Purposes to:
 Hon. Lynn Poncin
 Dept. S28

**FIRST AMENDED COMPLAINT FOR
 REPRESENTATIVE ACTION FOR
 PENALTIES UNDER PRIVATE
 ATTORNEYS GENERAL ACT, LABOR
 CODE § 2698 *et seq.* FOR:**

1. Failure to Pay Minimum Wages;
2. Failure to Pay Wages and Overtime Under Labor Code § 510;
3. Meal Period Liability Under Labor Code §§ 226.7, 512;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a);
6. Violation of Labor Code § 203; and
7. Failure to Reimburse Expenses § 2802

DEMAND FOR JURY TRIAL

BY FAX

1 Plaintiff Edward Morales Tellez (hereinafter “Plaintiff”), on behalf of himself and all
2 others similarly aggrieved employees of Defendants, complains of Defendants, and each of them,
3 as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this representative action, pursuant to the Private Attorneys General
6 Act of 2004 (“PAGA”), Labor Code § 2698 *et seq.*, on behalf of himself and all similarly situated
7 aggrieved non-exempt employees (“Aggrieved Employees”) who currently work or formerly
8 worked for Defendants PICK-YOUR-PART AUTO WRECKING, a California corporation, and
9 DOES 1 through 50 (all defendants being collectively referred to herein as “Defendants”). From at
10 least one (1) year prior to the filing of this action and at least one (1) year prior to the date Plaintiff
11 began the process of exhausting the administrative requirements pursuant to Labor Code § 2698,
12 *et seq.*, on **May 13, 2019**, and continuing to the present (the “liability period”), Defendants
13 violated various provisions of the California Labor Code and relevant orders of the Industrial
14 Welfare Commission. Plaintiff seeks redress for these violations

15 2. Upon information and belief, Plaintiff was employed by Defendants and (1) shared
16 similar job duties and responsibilities; (2) was subjected to the same policies and practices; and (3)
17 endured similar violations at the hands of Defendants as the other Aggrieved Employees who
18 served in similar and related positions.

19 **THE PARTIES**

20 **A. The Plaintiff**

21 3. Plaintiff, Edward Morales Tellez, is a resident of Riverside County in California,
22 and during the time period relevant to this Complaint, was employed by Defendants as a non-
23 exempt, hourly employee, based out of Defendants’ facility in San Bernardino, California.

24 **B. The Defendants**

25 4. Defendant, PICK-YOUR-PART AUTO WRECKING (“PICK-YOUR-PART”), is
26 a California corporation and lists its principal offices in Chicago, Illinois. During the relevant time
27 period, PICK-YOUR-PART has been listed as the employer on the wage statements and other
28 employment related documentation issued to Plaintiff, and upon information and belief, the other

Aggrieved Employees.

5. The true names and capacities, whether individual, corporate, associate, or whatever else, of the Defendants sued herein as Does 1 through 50, inclusive, are currently unknown to Plaintiff, who therefore sues these Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and thereon alleges, that Defendants designated herein as Does 1 through 50, inclusive, and each of them, are legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated herein as Does 1 through 50 when their identities become known.

6. Plaintiff is informed and believes, and thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, that Defendants carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in all respects as the employers or joint employers of Employees. Defendants, and each of them, exercised control over the wages, hours or working conditions of Employees, issued policies governing their employment, or suffered or permitted Employees to work, or engaged, thereby creating a common law employment relationship, with Employees. Therefore, Defendants, and each of them, employed or jointly employed Employees.

7. Whenever and wherever reference is made in this Complaint to any act by a defendant or defendants, such allegations and references shall also be deemed to mean the acts and failures to act of each defendant acting individually, jointly, and severally.

8. Whenever and wherever reference is made to individuals who are not named as a Defendant in this Complaint but were agents, servants, employees and/or supervisors of Defendants, such individuals at all relevant times acted on behalf of Defendants within the scope of their employment.

JURISDICTION AND VENUE

9. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought

1 as a representative on behalf of similarly situated Employees of Defendants pursuant to California
2 Code of Civil Procedure § 2699, *et seq.* Venue as to Defendants is also proper in this judicial
3 district pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief,
4 the obligations and liabilities giving rise to this lawsuit occurred at least in part in San Bernardino
5 County. Defendants maintain and operate company facilities in San Bernardino County, and
6 employ Plaintiff and other Aggrieved Employees throughout California.

7 **FACTUAL BACKGROUND**

8 10. The Aggrieved Employees, including Plaintiff, are non-exempt employees pursuant
9 to the applicable Wage Order(s) of the Industrial Welfare Commission (“IWC”). Defendants hire
10 hourly employees who work in non-exempt positions at the direction of Defendants within the
11 State of California. From one year prior to the filing of this action and continuing through the
12 present and resolution of it, Defendants’ employment practices resulted in (i) Aggrieved
13 Employees performing off-the-clock post-shift work, (ii) the under-recording of hours worked, all
14 while under the control of Defendants due to Defendants systematic practice of rounding down all
15 hours worked, (iii) failure to provide timely, uninterrupted meal and rest breaks, (iv) failure to pay
16 minimum wages for all hours worked, (v) failure to furnish accurate wage statements, and (vi)
17 failure to reimburse all necessary incurred business related expenses. Defendants conduct thus
18 violated various provisions of the California Labor Code and applicable Wage Orders.

19 11. Plaintiff and Aggrieved Employees performed their jobs but were not paid the
20 minimum wages, overtime wages, and double time wages, to which they were entitled to because
21 of Defendants’ systematic policies and practices of rounding and failing to properly compensate
22 Aggrieved Employees for all hours worked. More specifically, Aggrieved Employees would clock
23 in upon arriving to Defendants facilities. Upon information and belief this time keeping system
24 would then round the time inputted to the nearest quarter of an hour, regardless of time entered by
25 Aggrieved Employees. These same time-keeping machines would also round the hours recorded to
26 the nearest quarter of an hour upon Aggrieved Employees clocking in and out for meal breaks, and
27 at the end of their shift when they punched out.

28 ///

1 12. Upon information and belief, Defendants had the ability to record hours worked to
2 the exact minute but instead chose to round the hours worked to the nearest quarter of an hour in
3 order to secure a discount upon Aggrieved Employees. Defendants' willful actions resulted in the
4 systematic underpayment of wages to Aggrieved Employees, including underpayment of overtime
5 and double time pay to Aggrieved Employees over a period of time.

6 13. Defendants also failed to pay Aggrieved Employees all wages due and owing for
7 post-shift hours worked in the form of a security inspection, time for which Aggrieved Employees
8 were under Defendants control and not compensated. Plaintiff was scheduled to work, on average,
9 six (6) days per week, Monday to Saturday, from 6:00 a.m. to 2:30 p.m. Yet at the end of
10 Aggrieved Employees scheduled shifts they would first have to clock out before passing through
11 Defendants security system. Defendants security system took the form of a bag check in which a
12 security guard would check customers and employees bags as they left Defendants premises to
13 confirm that no items were being taken off site that were not included as a listed item on that
14 person's receipt. While this bag check took anywhere from one (1) minute or longer per person,
15 this off the clock work was exacerbated by the fact that both customers and employees had to wait
16 in the same line. This resulted in Aggrieved Employees typically waiting anywhere from five (5)
17 to ten (10) minutes or more per day, depending on the length of the security check line, before
18 they were able to leave Defendant's premises.

19 14. This was an intentional and calculated practice of Defendants to avoid paying
20 Aggrieved Employees all duly owed wages. Thus, Aggrieved Employees worked longer hours
21 than recorded by Defendants. This off-the-clock work also resulted in overtime hours accruing
22 earlier than when Defendants started paying them in a work shift. Defendants therefore unlawfully
23 deducted wages earned by and owed to the Aggrieved Employees, in violation of Labor Code §
24 510.

25 15. To the extent that Defendants paid overtime to Plaintiff and Aggrieved Employees,
26 it began doing so well after eight (8) hours into a work shift and/or forty (40) hours a week
27 (including minimum wages and overtime), and double time rates for all hours worked in excess of
28 twelve (12) hours a day, as Defendants' corresponding time records and paystubs show.

1 16. Therefore, from one (1) year prior to the filing of this lawsuit and continuing to the
2 present, Defendants had a consistent policy or practice of failing to pay Aggrieved Employees for
3 all hours worked, and failing to pay minimum wages, overtime wages, and double time wages for
4 all time worked as required by California Law and in violation of the Labor Code § 1197, IWC
5 Wage Order MW-2014, and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage
6 Orders. Defendants' willful actions resulted in the systematic underpayment of wages to
7 Aggrieved Employees, including underpayment of overtime and double time pay to Aggrieved
8 Employees over a period of time.

9 17. Plaintiff contends this policy results, over time, to the detriment of Aggrieved
10 Employees by systematically under-compensating them.

11 18. As a result of Defendants' unlawful policies and practices, Plaintiff and Aggrieved
12 Employees incurred overtime hours worked for which they were not adequately and completely
13 compensated for, in addition to the hours they were required to work off-the-clock. To the extent
14 applicable, Defendants also failed to pay Plaintiff and Aggrieved Employees at an overtime rate of
15 1.5 times the regular rate for the first eight hours of the seventh consecutive work day in a week
16 and overtime payments at the rate of two (2) times the regular rate for hours worked over eight (8)
17 on the seventh consecutive work day, as required under the Labor Code and applicable IWC Wage
18 Orders.

19 19. Additionally, Defendants failed to provide all the legally required unpaid, off-duty
20 meal periods and all the legally required paid, off-duty rest periods to the Plaintiff and the other
21 Aggrieved Employees, including as required by Labor Code §§ 226.7 and 512, and paragraphs 11
22 and 12 of the applicable IWC Wage Orders.

23 20. Defendants did not have a policy or practice which provided or recorded all the
24 legally required unpaid, off-duty meal periods. Plaintiff and Aggrieved Employees were required
25 to perform work as ordered by Defendants for more than five (5) hours during a shift, but were
26 often required to do so without receiving a lawful and timely meal break, and were sometimes
27 required to take shortened meal breaks in order to keep up with the demands and pressures from
28 Defendants. This is because Defendants placed the current job needs over Aggrieved Employees'

1 lawful meal breaks, forcing Aggrieved Employees to take on duty meal periods in order to keep up
2 with the demands of the job. For example, Plaintiff and Aggrieved Employees had a daily quota
3 they had to meet depending on their specific duties, such as, but not limited to, needing to strip a
4 certain amount of cars a day. In order to meet this daily quota Aggrieved Employees often had to
5 work through their lawful meal breaks of take them after the fifth hour worked.

6 21. When Aggrieved Employees punched out for lunch after the 5th hour worked,
7 Defendants time clock system recorded a “LONG1” next to that punch entry. This “LONG1”
8 meant that the Aggrieved Employee punched out for lunch after the 5th hour of working. Yet, upon
9 information and belief, Defendants did not pay Aggrieved Employees premium pay for any
10 missed, late, or shortened meal breaks.

11 22. Therefore, from at least one (1) year prior to the filing of this lawsuit and
12 continuing to the present, meal period violations thus occurred in one or more of the following
13 manners:

- 14 a. Aggrieved Employees were not provided full thirty-minute duty free meal
15 periods for work days in excess of five (5) hours and were not compensated one
16 (1) hour’s wages in lieu thereof, all in violation of, among others, Labor Code
17 §§ 226.7, 512, and the applicable Industrial Welfare Commission Wage
18 Order(s);
- 19 b. Aggrieved Employees were not provided second full thirty-minute duty free
20 meal periods for work days in excess of ten (10) hours;
- 21 c. Aggrieved Employees were required to work through at least part of their daily
22 meal period(s);
- 23 d. Aggrieved Employees were not provided with “premium pay,” i.e. one hour of
24 wages at each Employee’s effective hourly rate of pay, for each meal period
25 that Defendants failed to provide or deficiently provided.
- 26 e. Meal periods were provided after five hours of continuous work during a shift;

27 ///

28 ///

- f. Aggrieved Employees were restricted in their ability to take a full duty free thirty-minute meal period; and
- g. Aggrieved Employees were unable to leave the premises during their meal periods.

23. Plaintiff and Aggrieved Employees were regularly required by Defendants to work through or during their rest breaks and were not provided with one hour's wages in lieu thereof, as discussed more fully above.

24. Rest period violations therefore arose in one or more of the following manners:

- a. Aggrieved Employees were required to work without being provided a minimum ten (10) minute rest period for every four (4) hours or major fraction thereof worked and were not compensated one (1) hour of pay at their regular rate of compensation for each workday that a rest period was not provided;
- b. Aggrieved Employees, due to the busy work environment, were restricted in their ability to take timely off-duty rest breaks which in turn were often provided at the end of a shift instead of every four (4) hours worked, or major fraction thereof; and
- c. Aggrieved Employees were unable to leave the premises during their rest breaks.

25. Defendants also consistently failed to issue accurate itemized wage statements as required by Labor Code § 226(a). The wage statements are required to show the total hours worked by Aggrieved Employees, amongst other items detailed below, which they do not. The absence of showing total hours worked, combined with Defendants practice of paying all double time hours worked by Aggrieved Employees at their standard hourly rate lead to confusion about how many hours were actually worked and at which rates per pay period.

26. Therefore, from at least one (1) year prior to filing this lawsuit and continuing to the present, Defendants have also had a consistent policy of failing to pay all wages owed to Employees at the time of their termination of within seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.

1 27. Defendants' management also did not reimburse Plaintiff and Aggrieved
2 Employees for all necessarily incurred expenses in performance of their job duties. Plaintiff
3 incurred personal cellular phone expenses and clothing related charges in the performance of his
4 job duties that were uncompensated for. In regards to non-reimbursed clothing related changes,
5 Plaintiff had to buy select clothing items, such as mechanic overalls, without reimbursement from
6 Defendants.

7 28. In regards to Plaintiff's non-reimbursed personal cellular phone usage, Plaintiff was
8 required to use his cellular phone to look up specific mechanical issues for select cars. Due to the
9 quota put upon Plaintiff he was unable to afford the time to ask other employees for assistance or
10 management for help. The fastest way for Plaintiff to find mechanical related answers was through
11 his personal cellular phone use.

12 29. In light of the foregoing, Plaintiff bring this action on behalf of himself and on
13 behalf of all similarly situated Employees, pursuant to, *inter alia*, Labor Code §§ 201, 202, 203,
14 204, 218.6, 226, 226.7, 510, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, 2699, and California
15 Code of Regulations, Title 8, section 11000 *et seq.*

16 30. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff
17 and his fellow Employees seek injunctive relief, restitution, and disgorgement of all benefits
18 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
19 fraudulent practices alleged in this Complaint.

20 **PAGA NOTICE AND ALLEGATIONS**

21 31. Plaintiff brings this PAGA representative action on behalf of himself and all others
22 similarly situated Aggrieved Employees employed by Defendants during the liability period
23 pursuant to Labor Code § 2698 *et seq.* Plaintiff and Employees are aggrieved employees as
24 defined under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint
25 and either were or are employed by the alleged violators, Defendants. Upon information and
26 belief, at all times during the liability period, Plaintiff and the Aggrieved Employees were
27 employees subject to the protections of the California Labor Code and the applicable Industrial
28 Welfare Commission ("IWC") Wage Orders.

32. In failing to pay Aggrieved Employees minimum wages and overtime, not providing proper meal and rest periods, failing to reimburse necessary business expenses, failing to provide accurate itemized wage statements, and failing to pay Employees wages upon termination or timely upon resignation, all addressed herein, Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required under Labor Code § 204. Defendants also failed to maintain records showing accurate hours worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and the applicable IWC Wage Orders.

33. As such, Plaintiff and the Aggrieved Employees seek penalties under Labor Code §§ 2698 and 2699 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5, which includes the penalty provisions, without limitation, based *inter alia* on the following California Labor Code sections: 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1, 1194.2, 1197, 1197.1, 1199, 2802, and 2698 *et seq.*

34. More specifically, after complying with the notice procedures of Labor Code § 2699.3, Plaintiff asserts as a representative action on behalf of the California Attorney General and the other similarly Aggrieved Employees a PAGA claim for violations of the underlying claims addressed herein and seeking penalties as specified by the applicable corresponding provisions, including as follows:

(a) Meal and Rest Period Claims: For penalties associated with the failure to provide Plaintiff and the Aggrieved Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A) and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable, under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(3), and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(b) Inaccurate Wage Statements and Failure to Maintain Records: For penalties associated with the failure to provide Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to maintain employment records for Plaintiff and Aggrieved

1 Employees under Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the
2 applicable IWC Wage Order(s) seeking all civil and statutory penalties available and applicable
3 under Labor Code §§ 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys' fees and
4 costs pursuant to Labor Code § 2699(g)(1);

5 (c) Failure to Timely Pay Wages: For penalties associated with the failure to
6 timely pay all wages owed, including at least semi-monthly and upon separation or termination,
7 under Labor Code §§ 201, 201, 203, 204, 1197.5, 2926, and 2927 seeking all civil penalties
8 available and applicable under Labor Code §§ 201, 202, 203, 204, 210, 558, 1197, and 2699(f)(2),
9 and Section 20 of the applicable IWC Wage Order(s), and also for attorneys' fees and costs
10 pursuant to Labor Code § 2699(g)(1);

11 (d) Unlawful Deductions and Failure to Reimburse Necessary Business
12 Expenses: Penalties associated with Defendants' unlawful deductions from wages and for
13 Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code
14 §§ 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage
15 Order(s), seeking civil penalties available and applicable under Labor Code §§ 1197, 1197.1,
16 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also
17 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

18 (e) All Alleged Violations of the IWC Wage Orders: For any above addressed
19 violation of the applicable provisions of the IWC Wage Orders constituting violations of Labor
20 Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under
21 Labor Code § 2699(f)(2) and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

22 35. The penalties shall be allocated under Labor Code § 2699(i) as follows: 75% to the
23 Labor and Workforce Development Agency (LWDA) and 25% to the affected employees.

24 36. As also addressed above, Plaintiff on behalf of the Aggrieved Employees also seeks
25 the penalties and remedies set forth in Labor Code § 558, which states:

26
27 (a) Any employer or other person acting on behalf of an employer who
28 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 in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee.

(b) If upon inspection or investigation the Labor Commissioner determines that a person had paid or caused to be paid a wage for overtime work in violation of any provision of this chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting, and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a violation of this chapter shall be the same as those set out in Section 1197.1.

(c) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.

37. Plaintiff has exhausted his administrative remedy by sending a certified letter to the LWDA and Defendants postmarked on **May 13, 2020**, addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories to support the alleged violations. The LWDA has not provided notice of its intent to investigate the alleged violations within 65 calendar days of the postmark date of the letter. As a result, as a matter of law, Plaintiff is entitled to file this Complaint for full compliance and exhaustion of the notice requirements under the PAGA and seeks civil penalty assessments against Defendants as a Representative of the State of California as hereinafter alleged and in accordance with the law, in addition to costs and reasonable attorneys' fees as provided by the PAGA statute. A true and correct copy of the **May 13, 2020**, Notice to the LWDA and the Defendants is attached hereto **Exhibit A** and is expressly incorporated into this Complaint as if set forth in full. Plaintiff alleges that the notice period provided by statute has expired and amendment is proper pursuant to Labor Code § 2699.3(a)(2)(C).

38. This action has been brought and may properly be maintained as a representative action under the provisions of Labor Code § 2698 *et seq.* seeking civil and statutory penalties based, *inter alia*, on the following claims addressed in detail herein:

- a. Defendants failed to pay Aggrieved Employees minimum wages and wages for all hours worked;

- b. Defendants failed to pay Aggrieved Employees overtime as required under Labor Code § 510;
- c. Defendants violated Labor Code §§ 226.7 and 512, and the applicable IWC Wage Orders, by failing to provide Aggrieved Employees with requisite meal periods or premium pay in lieu thereof;
- d. Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage Orders, by failing to authorize and permit Aggrieved Employees to take requisite rest breaks or provide premium pay in lieu thereof;
- e. Defendants violated Labor Code § 226(a) by providing Aggrieved Employees with inaccurate wage statements;
- f. Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay wages and compensation due and owing at the time of termination of employment;
- g. Defendants violated Labor Code § 226 and § 1174 and the IWC Wage Orders by failing to maintain accurate records of Aggrieved Employees' earned wages and work periods;
- h. Defendants violated Labor Code § 1194 by failing to compensate all Aggrieved Employees during the relevant time period for all hours worked, whether regular or overtime;
- i. Defendants violated Labor Code § 204 by failing to pay Aggrieved Employees all wages earned at least twice monthly; and
- j. Defendants failed to reimburse necessary business expenses incurred by Employees in connection with performing their job duties under Labor Code § 2802.

FIRST CAUSE OF ACTION

PENALTIES UNDER THE PAGA FOR FAILURE TO PAY MINIMUM WAGES

(Against All Defendants)

39. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 40. Defendants failed to pay Employees minimum wages for all hours worked.
3 Defendants had a consistent policy of requiring Employees to misstate their time records to
4 conform to scheduled or compliant times rather than actual hours worked and failing to pay
5 Employees for all hours worked. Employees would work hours and not receive wages, including
6 as alleged above in connection with off the clock work, including all the time required to remain
7 on duty and under Defendants' control during rest and meal breaks, along with other demands
8 placed upon them by Defendants' management. Defendants, and each of them, have also
9 intentionally and improperly rounded, changed, adjusted and/or modified Employee hours, or
10 required Employees to do so, and imposed difficult to attain job and shift scheduling requirements
11 on Plaintiff and the Aggrieved Employees, which resulted in off the clock work and underpayment
12 of all wages owed to Employees over a period of time, while benefiting Defendants. During the
13 relevant time period, Defendants thus regularly failed to pay minimum wages to Plaintiff and the
14 Aggrieved Employees, including by requiring systematic off the clock work. Defendants' uniform
15 pattern of unlawful wage and hour practices manifested, without limitation, applicable to the
16 Aggrieved Employees as a whole, as a result of implementing a uniform policy and practice that
17 denied accurate compensation to Plaintiff and the other Aggrieved Employees as to minimum
18 wage pay.

19 41. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil penalties
20 and remedies for each Aggrieved Employee for each pay period in the applicable statute of
21 limitations in which the Aggrieved Employee was not paid for all hours worked for each pay
22 period, plus reasonable attorneys' fees and costs.

23 42. The Private Attorneys General Act of 2004 ("PAGA") provides that:
24 ... an aggrieved employee may recover the civil penalty described in
25 subdivision (I) in a civil action pursuant to the procedures specified in
26 Section 2699.3 filed on behalf of himself or herself and other current or
27 former employees against whom one or more of the alleged violations was
28 committed. Any employee who prevails in any action shall be entitled to
an award of reasonable attorney's fees and costs. Nothing in this part shall
operate to limit an employee's right to pursue or recover other remedies
available under state or federal law, either separately or concurrently with
an action taken under this part.

1 California Labor Code § 2699(g)(1).

2 43. Plaintiff is an “aggrieved employee” under the PAGA, as he was employed by
3 Defendants during the applicable statutory period and suffered one or more of the California Labor
4 Code violations set forth herein. Accordingly, Plaintiff seeks to recover on behalf of himself and
5 all other current and former aggrieved non-exempt employees, as defined above, the civil penalties
6 provided by the PAGA, plus reasonable attorneys’ fees and costs, after having satisfied the PAGA
7 notice requirements as set forth above.

8 44. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
9 policies, practices and business acts of Defendants to the extent provided by law as a
10 Representative Action, including reasonable attorneys’ fees and costs, and for civil penalties as
11 permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute. Plaintiff thus
12 seeks civil penalties against Defendants for failure to provide Plaintiff and other aggrieved non-
13 exempt employees proper regular pay and minimum wages for regular hours worked and/or
14 overtime premium pay for overtime hours worked during the applicable statutory period pursuant
15 to Section 558, and also pursuant to the default PAGA penalties provisions of Labor Code §
16 2699(f)(2).

17 45. In California, employees must be paid at least the then applicable state minimum
18 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014, and
19 paragraphs 4(A)-4(C) of the applicable IWC Wage Orders. Section 2(G) of the applicable IWC
20 Wage Orders defines “Hours worked” as “the time during which an employee is subject to the
21 control of an employer, and includes all the time the employee is suffered or permitted to work,
22 whether or not required to do so.”

23 46. Additionally, pursuant to California Labor Code § 204, other applicable laws and
24 regulations, and public policy, an employer must timely pay its employees for all hours worked.
25 Defendants failed to do so.

26 47. California Labor Code § 1197, entitled “Pay of Les Than Minimum Wage” states:
27 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to
28 employees, and the payment of a les wage than the minimum so fixed is unlawful.”

1 48. The applicable minimum wage rate fixed by the commission for work during the
2 relevant period is found in the Wage Orders.

3 49. The minimum wage provisions of California Labor Code are enforceable by private
4 civil action pursuant to Labor Code § 1194(a) which states: “Notwithstanding any agreement to
5 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
6 overtime compensation applicable to the employee is entitled to recover in a civil action the
7 unpaid balance of the full amount of this minimum wage or overtime compensation, including
8 interest thereon, reasonable attorney’s fees and costs of suit.”

9 50. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
10 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
11 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
12 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
13 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
14 the absence of a contractually agreed upon one.

15 51. In committing these violations of the California Labor Code, Defendants
16 inaccurately recorded, or required Plaintiff and the Aggrieved Employees to input times that did
17 not reflect their actual hours worked, or calculated the correct time worked and consequently
18 underpaid the actual time worked by Plaintiff and other Aggrieved Employees. Defendants acted
19 in an illegal attempt to avoid the payment of all earned wages, and other benefits in violation of
20 the California Labor Code, the Industrial Welfare Commission requirements and other applicable
21 laws and regulations. As a result of these violations, Defendant also failed to timely pay all wages
22 earned in accordance with California Labor Code § 1194.

23 52. California Labor Code § 1194.2 also provides for the following remedies: “In any
24 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
25 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
26 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.”
27 Pursuant to California Labor Code § 1197.1, Plaintiff and Aggrieved Employees are entitled to
28 recover a penalty of \$100.00 for the initial failure to timely pay each employee minimum wages,

1 and \$250.00 for each subsequent failure to pay each employee minimum wages.

2 53. Labor Code § 1198 also requires that: “The maximum hours of work and the
3 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
4 standard conditions of labor for employees. The employment of any employee for longer hours
5 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
6 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
7 IWC Wage Order provisions, and Labor Code § 2699.5 also lists Section 1198 as one of the
8 provisions for which a representative PAGA action may be commenced under Labor Code §
9 2699.3.

10 54. Additionally, Labor Code § 1199 provides that: “Every employer or other person
11 acting either individually or as an officer, agent, or employee of another person is guilty of a
12 misdemeanor and is punishable by a fine of not less than one hundred dollars (\$100)..., who does
13 any of the following: (a) Requires or causes any employee to work for longer hours than those
14 fixed, or under conditions of labor prohibited by an order of the commission. (b) Pays or causes to
15 be paid to any employee a wage less than the minimum fixed by an order of the commission....”

16 55. Section 20 of IWC Wage Order No. 1 addresses further penalties as follows: “(A)
17 In addition to any other civil penalties provided by law, any employer or any other person acting
18 on behalf of the employer who violates, or causes to be violated, the provisions of this order, shall
19 be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each underpaid employee for
20 each pay period during which the employee was underpaid in addition to the amount which is
21 sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for each underpaid
22 employee for each pay period during which the employee was underpaid in addition to an amount
23 which is sufficient to recover unpaid wages. (3) The affected employee shall receive payment of
24 all wages recovered.”

25 56. Labor Code § 2699(f)(2) states: “For all provisions of this code except those

26 57. for which a civil penalty is specifically provided, there is established a civil penalty
27 for a violation

28 58. of these provisions, as follows ... (2) If, at the time of the alleged violation, the

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

4 59. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
5 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
6 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
7 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
8 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204,... 221,
9 ...510, 512,... 1194, 1197, 1197.1 and 1198...1199”, and these provisions of the Code allow for
10 recovery of civil penalties pursuant to the PAGA in this action. Plaintiff has fully complied with
11 procedures specified in Labor Code § 2699.3.

12 60. Defendants’ conduct, as alleged herein, violates the aforementioned regulations
13 because Defendants failed to properly compensate Plaintiff and other aggrieved non-exempt
14 employees applicable minimum wages and contractually agreed upon wages for all hours they
15 were required to work and remain under Defendants’ control.

16 61. As such, Defendants are liable for PAGA penalties resulting from their failure to
17 provide Plaintiff and the other Aggrieved Employees minimum wages and all wages owed for all
18 hours worked. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this
19 representative action, all civil and statutory penalties authorized for violations of California Labor
20 Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20 of the applicable
21 IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable
22 under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys’
23 fees and costs pursuant to Labor Code § 2699(g)(1).

24 **SECOND CAUSE OF ACTION**

25 **CIVIL PENALTIES UNDER THE PAGA FOR FAILURE TO PAY WAGES AND**

26 **OVERTIME UNDER LABOR CODE § 510**

27 **(Against All Defendants)**

28 62. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in

1 full herein.

2 63. California Labor Code § 1194 provides that “any employee receiving less than the
3 legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
4 recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime
5 compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.” The action
6 may be maintained directly against the employer in an employee’s name without first filing a
7 claim with the Division of Labor Standards and Enforcement.

8 64. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
9 Labor Code § 510 (and paragraphs 3(A) and 4(A)-4(B) of the relevant orders of the Industrial
10 Welfare Commission) by failing to pay Employees for all their hours worked, including at: (a)
11 time and one-half their regular hourly rates for hours worked in excess of eight (8) hours in a
12 workday or in excess of forty (40) hours in any workweek or for the first eight (8) hours worked
13 on the seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours
14 worked in excess of twelve (12) hours in any one (1) day or for hours worked in excess of eight
15 (8) hours on any seventh day of work in a workweek. Defendants had a consistent policy of not
16 paying Employees wages for all hours worked, including by requiring off the clock work as
17 addressed above and by unlawfully rounding down and under-reporting actual hours worked.

18 65. Similar to Labor Code § 510, Section 3(A) of the applicable IWC Wage Orders
19 instructs that: “(A) Daily Overtime-General Provisions (1) The following overtime provisions are
20 applicable to employees 18 years of age or over... Such employees shall not be employed more
21 than eight (8) hours in any workday or more than 40 in a workweek unless the employee receives
22 one and one half (1 1/2) times such employee’s regular rate of pay for all hours worked over 40
23 hours in the workweek. Eight (8) hours of labor constitutes a day’s work. Employment beyond
24 eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided
25 the employee is compensated for such overtime at not less than: (a) One and one-half (1 1/2) times
26 the employee’s regular rate of pay for all hours worked in excess of eight (8) hours up to and
27 including twelve (12) hours in any workday,...”

28 66. Defendants had a consistent policy of not paying Employees wages for all hours

1 worked, including hours at their required regular, overtime, and double-time rates. Defendants,
2 and each of them, have intentionally and improperly rounded, changed, adjusted and/or modified
3 certain employees' hours, including Plaintiff's, or required Plaintiff and the Aggrieved Employees
4 to do so, or otherwise caused them to work off the clock to avoid paying Plaintiff and the
5 Aggrieved Employees all earned and owed straight time and overtime wages and other benefits, in
6 violation of the California Labor Code, the California Code of Regulations and the IWC Wage
7 Orders and guidelines set forth by the Division of Labor Standards and Enforcement. Defendants
8 have also violated these provisions by requiring Plaintiff and other similarly situated non-exempt
9 employees to work through meal periods when they were required to be clocked out or to
10 otherwise work off the clock to complete their daily job duties or to attend and participate in
11 company required activities. Therefore, Employees were not properly compensated, nor were they
12 paid overtime rates for hours worked in excess of eight hours in a given day, and/or forty hours in
13 a given week. Based on information and belief, Defendants did not make available to Employees a
14 reasonable protocol for correcting time records when Employees worked overtime hours or to fix
15 incorrect time entries or those that Defendants unlawfully under-recorded to the Employee's
16 detriment.

17 67. Defendants' failure to pay Plaintiff and the Aggrieved Employees the unpaid
18 balance of regular wages owed and overtime compensation for all hours worked, as required by
19 California law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the
20 applicable IWC Wage Orders, and is therefore unlawful.

21 68. Pursuant to Labor Code § 2699, Plaintiff seeks all applicable PAGA civil penalties
22 and remedies for each Aggrieved Employee for each pay period in the applicable statute of
23 limitations in which the Aggrieved Employee was not paid at the correct overtime rate for all
24 hours worked for each pay period, plus reasonable attorneys' fees and costs. Plaintiff is entitled to
25 bring this claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the PAGA notice
26 requirements, as addressed above. Plaintiff further seeks civil penalties pursuant to Labor Code
27 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to pay all
28 overtime wages in violation of the underlying Labor Code sections addressed herein.

1 69. Defendants' failure to pay compensation in a timely fashion also constituted a
2 violation of California Labor Code § 204, which requires that all wages shall be paid
3 semimonthly. From one (1) year¹ prior to the filing of this lawsuit to the present, in direct
4 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
5 and overtime compensation earned by Employees. Each such failure to make a timely payment of
6 compensation to Employees constitutes a separate violation of California Labor Code § 204.

7 70. As a result of these violations, Defendant also failed to timely pay all wages earned
8 in accordance with California Labor Code § 1194. California Labor Code § 1194.2 also provides
9 for the following remedies: "In any action under Section 1194 . . . to recover wages because of the
10 payment of a wage less than the minimum wages fixed by an order of the commission, an
11 employee shall be entitled to recover liquidated damages in an amount equal to the wages
12 unlawfully unpaid and interest thereon."

13 71. Labor Code § 1198 also requires that: "The maximum hours of work and the
14 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
15 standard conditions of labor for employees. The employment of any employee for longer hours
16 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
17 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
18 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
19 for which a representative PAGA action may be commenced under Labor Code § 2699.3. Section
20 20 of IWC Wage Orders addresses further penalties derived from Section 1198 violations.

21 72. Labor Code § 2699(f)(2) states: "For all provisions of this code except those for
22 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
23 these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs one
24 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
25 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
26 employee per pay period for each subsequent violation."

27 73. Labor Code § 2699.3 allows "(a) A civil action by an aggrieved employee pursuant
28 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section

1 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
2 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
3 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 204, ...510,
4 512,... 1194, 1197, 1197.1 and 1198...1199” among the provisions of the Code that allow for
5 recovery of civil penalties pursuant to the PAGA. As a direct and proximate result of Defendants’
6 unlawful acts, as alleged in detail herein, Plaintiff and other aggrieved non-exempt employees
7 have been deprived, and continue to be deprived, of overtime wages owed for all hours they
8 worked. Plaintiff has fully complied with procedures specified in Labor Code § 2699.3.

9 74. As such, Defendants are liable for PAGA penalties resulting from their failure to
10 timely provide Plaintiff and the other Aggrieved Employees overtime and premium wages for all
11 hours worked. Accordingly, Plaintiff is entitled to recover, and hereby seeks through this
12 representative action, all civil and statutory penalties authorized for violations of California Labor
13 Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20 of the applicable
14 IWC Wage Order(s), and Plaintiff seeks all civil and statutory penalties available and applicable
15 under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also attorneys’
16 fees and costs pursuant to Labor Code § 2699(g)(1).

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19 **THIRD CAUSE OF ACTION**

20 **CIVIL PENALTIES UNDER THE PAGA FOR MEAL-PERIOD LIABILITY**

21 **UNDER LABOR CODE §§ 512, 226.7**

22 **(Against All Defendants)**

23 75. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
24 full herein.

25 76. Employees regularly worked shifts greater than five (5) hours and in some
26 instances, greater than ten (10) hours. Pursuant to Labor Code § 512, and paragraph 11 of the
27 applicable IWC Wage Orders, an employer may not employ someone for a shift of more than five
28 (5) hours without providing him or her with a meal period of not less than thirty (30) minutes or for

1 a shift of more than ten (10) hours without providing him or her with a second meal period of not
2 les than thirty (30) minutes. Section 11(A)-(E) of the applicable Wage Orders provides similar
3 requirements to those of Labor Code § 512,

4 77. Defendants failed to provide Employees with meal periods as required under the
5 Labor Code and paragraph 11 of the applicable IWC Wage Orders. Employees were often
6 required to work or to otherwise remain under Defendants' control during meal periods in order to
7 meet the daily quota's, or Defendants provided them after Employees worked beyond the fifth
8 hour of their shifts or Employees otherwise had them shortened and interrupted by work demands
9 and requirements. Furthermore, upon information and belief, on the occasions when Employees
10 worked more than ten (10) hours in a given shift, they did so without receiving a second
11 uninterrupted thirty (30) minute meal period as required by law.

12 78. Defendants thus failed to provide Plaintiff and the Aggrieved Employees with meal
13 periods, as required by the Labor Code and paragraph 11 of the applicable IWC Wage Orders,
14 including by not providing them with the opportunity to take meal breaks, by providing them late
15 or for les than thirty (30) minutes, or by requiring them to perform work during breaks.

16 79. Moreover, Defendants failed to compensate Employees for each meal period not
17 provided or inadequately provided, as required under Labor Code § 226.7 and paragraph 11 of the
18 applicable IWC Wage Orders, which provides that, if an employer fails to provide an employee a
19 meal period in accordance with this section, the employer shall pay the employee one (1) hour of
20 pay at the employee's regular rate of compensation for each workday that the meal period is not
21 provided. Defendants failed to compensate Employees for each meal period not provided or
22 inadequately provided, as required under Labor Code § 226.7.

23 80. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff and
24 other aggrieved non-exempt employees lawful off-duty unpaid meal periods. Pursuant to Labor
25 Code § 2699, Plaintiff seeks all applicable PAGA civil penalties and remedies for each Aggrieved
26 Employee for each pay period in the applicable statute of limitations in which the Aggrieved
27 Employee was not provided with a meal period, plus reasonable attorneys' fees and costs. Plaintiff
28 is entitled to bring this claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the

1 PAGA notice requirements, as addressed above. Plaintiff further seeks civil penalties pursuant to
2 Labor Code 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to
3 provide all required meal periods in violation of the underlying Labor Code sections addressed
4 herein.

5 81. Premium pay for denied lawful meal and rest periods is considered a "wage" rather
6 than a penalty. See *Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114. Plaintiff
7 therefore seeks to recover civil penalties pursuant to the PAGA that arise from the policies,
8 practices, and business acts of Defendants to the extent provided by law as a Representative
9 Action, including reasonable attorneys' fees and costs, and civil penalties for the underpayment of
10 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
11 Aggrieved employees may recover penalties for denied meal periods under the PAGA, as the civil
12 penalty under California Labor Code 558 applies to any provision regulating hours and days of
13 work in any Order, and Plaintiff has fully complied with procedures specified in Labor Code §
14 2699.3.

15 82. Labor Code § 2699(f)(2) states: "For all provisions of this code except those for
16 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
17 these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs one
18 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
19 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
20 employee per pay period for each subsequent violation."

21 83. Labor Code § 2699.3 allows "(a) A civil action by an aggrieved employee pursuant
22 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
23 2699.5" to commence upon satisfaction of its written notice requirements. Additionally, Labor
24 Code § 2699.5 provides, in pertinent part that "[t]he provisions of subdivision (a) of Section
25 2699.3 apply to any alleged violation of the following provisions: "[Labor Code §§] 226.7,
26 ...512,...558,... and 1198" among the provisions of the Code that allow for recovery of civil
27 penalties pursuant to the PAGA.

28 84. Defendants' conduct, as alleged herein, violates the aforementioned regulations

1 because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt
2 employees with lawful uninterrupted off-duty meal periods throughout the applicable statutory
3 period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper
4 premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were
5 denied an unpaid, off-duty 30-minute meal period.

6 85. As such, Defendants are liable for PAGA penalties resulting from their failure to
7 provide Plaintiff and other aggrieved non-exempt employees lawful meal periods and the
8 corresponding meal period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby
9 seeks through this Representative Action, all civil and statutory penalties authorized for violations
10 of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 11(A)-(E) of the applicable
11 IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable
12 under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(2), and 2699(f)(2), and also
13 for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

14 **FOURTH CAUSE OF ACTION**

15 **PENALTIES UNDER THE PAGA FOR REST-BREAK LIABILITY**

16 **UNDER LABOR CODE §§ 226.7, 512**

17 **(Against All Defendants)**

18 86. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
19 full herein.

20 87. Section 12(A)-(B) of the applicable IWC Wage Orders instruct that: "(A) Every
21 employer shall authorize and permit all employees to take rest periods, which insofar as
22 practicable shall be in the middle of each work period. The authorized rest period time shall be
23 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours
24 or major fraction thereof. However, a rest period need not be authorized for employees whose total
25 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period time shall be
26 counted as hours worked for which there shall be no deduction from wages. (B) If an employer
27 fails to provide an employee a rest period in accordance with the applicable provisions of this
28 order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of

1 compensation for each work day that the rest period is not provided.” Labor Code § 226.7 further
2 instructs that: “(b) An employer shall not require an employee to work during a meal or rest or
3 recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or
4 order of the Industrial Welfare Commission,…”

5 88. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
6 provide that employers must authorize and permit all employees to take rest periods at the rate of
7 ten (10) minutes net rest time per four (4) work hours. Defendants, and each of them, have
8 intentionally and improperly denied rest periods to Plaintiff and the Aggrieved Employees in
9 violation of Labor Code §§ 226.7 and 512 and paragraph 12 of the applicable IWC Wage Orders.

10 89. Employees consistently worked consecutive four (4) hour shifts and were generally
11 scheduled for shifts of greater than 3.5 hours total, thus requiring Defendants to authorize and
12 permit them to take rest periods. Pursuant to the Labor Code and paragraph 12 of the applicable
13 IWC Wage Order, Employees were entitled to paid rest breaks of not less than ten (10) minutes for
14 each consecutive four (4) hour shift, and Defendants failed to provide Employees with timely rest
15 breaks of not less than ten (10) minutes for each consecutive four (4) hour shift. Employees were
16 often required to work or to otherwise remain under Defendants’ control during rest periods, and
17 had breaks provided untimely as a result of the above described off the clock work. Plaintiff and
18 the Aggrieved Employees were also not permitted to leave their work premises during rest breaks.

19 90. Defendants failed to compensate Employees for each rest period not provided or
20 inadequately provided, as required under Labor Code § 226.7 and paragraph 12 of the applicable
21 IWC Wage Orders, which provide that, if an employer fails to provide an employee a meal period
22 in accordance with this section, the employer shall pay the employee one (1) hour of pay at the
23 employee’s regular rate of compensation for each workday that the meal period is not provided.
24 Defendants failed to compensate Employees for each meal period not provided or inadequately
25 provided, as required under Labor Code § 226.7.

26 91. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff and
27 other aggrieved non-exempt employees lawful off-duty rest periods. Pursuant to Labor Code §
28 2699, Plaintiff seeks all applicable PAGA civil penalties and remedies for each Aggrieved

1 Employee for each pay period in the applicable statute of limitations in which the Aggrieved
2 Employee was not provided with a rest break, plus reasonable attorneys' fees and costs. Plaintiff is
3 entitled to bring this claim pursuant to Labor Code § 2699(g)(1) and after having satisfied the
4 PAGA notice requirements, as addressed above. Plaintiff further seeks civil penalties pursuant to
5 Labor Code 558(a)(1)-(2) and Labor Code 2699(f)(2), as detailed above, for Defendants' failure to
6 provide all required rest periods in violation of the underlying Labor Code sections addressed
7 herein.

8 92. Premium pay for denied lawful meal and rest periods is considered a "wage" rather
9 than a penalty. *See Murphy v. Kenneth Cole Prods., Inc.* (2007) 40 Cal. 4th 1094, 1114. Plaintiff
10 therefore seeks to recover civil penalties pursuant to the PAGA that arise from the policies,
11 practices, and business acts of Defendants to the extent provided by law as a Representative
12 Action, including reasonable attorneys' fees and costs, and civil penalties for the underpayment of
13 wages as permitted by Labor Code § 558, as a separate penalty provided by the PAGA statute.
14 Aggrieved employees may recover penalties for denied meal periods under the PAGA, as the civil
15 penalty under California Labor Code 558 applies to any provision regulating hours and days of
16 work in any Order.

17 93. Labor Code § 2699(f)(2) states: "For all provisions of this code except those for
18 which a civil penalty is specifically provided, there is established a civil penalty for a violation of
19 these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs one
20 or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee
21 per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved
22 employee per pay period for each subsequent violation."

23 94. Labor Code § 2699.3 allows "(a) A civil action by an aggrieved employee pursuant
24 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
25 2699.5" to commence upon satisfaction of its written notice requirements. Additionally, Labor
26 Code § 2699.5 provides, in pertinent part that "[t]he provisions of subdivision (a) of Section
27 2699.3 apply to any alleged violation of the following provisions: "[Labor Code §§] 226.7,
28 ...512,...558,... and 1198" among the provisions of the Code that allow for recovery of civil

1 penalties pursuant to the PAGA. Plaintiff has fully complied with procedures specified in Labor
2 Code § 2699.3.

3 95. Defendants' conduct, as alleged herein, violates the aforementioned regulations
4 because Defendants failed to properly provide Plaintiff and other aggrieved non-exempt
5 employees with lawful uninterrupted off-duty rest breaks throughout the applicable statutory
6 period. Defendants also systematically denied Plaintiff and other Aggrieved Employees proper
7 premium pay at the rate of one hour of pay at their regular pay rates for each work shift they were
8 denied an off-duty rest period.

9 96. As such, Defendants are liable for PAGA penalties resulting from their failure to
10 provide Plaintiff and other aggrieved non-exempt employees lawful rest periods and the
11 corresponding rest period premium pay. Accordingly, Plaintiff is entitled to recover, and hereby
12 seeks through this Representative Action, all civil and statutory penalties authorized for violations
13 of California Labor Code §§ 226.7, 512, 558, and 1198, and Section 12(A)-(B) of the applicable
14 IWC Wage Orders, and Plaintiff seeks all civil and statutory penalties available and applicable
15 under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-(2), and 2699(f)(2), and also
16 attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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19 **FIFTH CAUSE OF ACTION**

20 **PENALTIES UNDER THE PAGA FOR FAILURE TO PROVIDE ACCURATE**
21 **ITEMIZED WAGE STATEMENTS UNDER LABOR CODE § 226(a) AND KEEP**
22 **ACCURATE PAYROLL RECORDS UNDER LABOR CODE § 1174**

23 **(Against All Defendants)**

24 97. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
25 full herein.

26 98. Plaintiff seeks civil penalties against Defendants for failure to provide Plaintiff and
27 the other Aggrieved Employees accurate itemized wage statements during the applicable statutory
28 period

1 99. California Labor Code § 226(a) requires an employer to furnish each of his or her
2 employees with an accurate, itemized statement in writing showing the gross and net earnings,
3 total hours worked, and the corresponding number of hours worked at each hourly rate; these
4 statements must be appended to the detachable part of the check, draft, voucher, or whatever else
5 serves to pay the employee's wages; or, if wages are paid by cash or personal check, these
6 statements may be given to the employee separately from the payment of wages; in either case the
7 employer must give the employee these statements twice a month or each time wages are paid.

8 100. Defendants failed to provide Plaintiff and the similarly situated concessions
9 supervisor Employees with accurate itemized wage statements in writing, as required by the Labor
10 Code and paragraphs 7(A)-(B) of the applicable IWC Wage Orders. Specifically, the wage
11 statements given to Employees by Defendants failed to accurately account for wages, overtime,
12 and premium pay for deficient meal periods and rest breaks, and rounded timekeeping entries to
13 the detriment of the Aggrieved Employees, all of which Defendants knew or reasonably should
14 have known were owed to Employees, as alleged above.

15 101. Paragraph 7(C) of the applicable IWC Wage Orders further requires that: "All
16 required records shall be in the English language and in ink or other indelible form, properly
17 dated, showing month, day, and year and shall be kept on file by the employer for at least three (3)
18 years at the place of employment or at a central location within the State of California. An
19 employee's records shall be available for inspection by the employee upon reasonable request."

20 102. Labor Code § 226.3 also instructs that: "Any employer who violates subdivision
21 (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars
22 (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per
23 employee for each violation in a subsequent citation, for which the employer fails to provide the
24 employee a wage deduction statement or fails to keep the records required in subdivision (a) of
25 Section 226. The civil penalties provided for in this section are in addition to any other penalty
26 provided by law."

27 103. Throughout the liability period, Defendants intentionally failed to furnish to
28 Plaintiff and the Aggrieved Employees, upon each payment of wages, itemized statements

1 accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the
2 number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all
3 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
4 paid, (7) the name of the employee and only the last four digits of his or her social security
5 number or an employee identification number other than a social security number, (8) the name
6 and address of the legal entity that is the employer and (9) all applicable hourly rates in effect
7 during the pay period and the corresponding number of hours worked at each hourly rate by the
8 employee pursuant to Labor Code § 226, amongst other statutory requirements, and paragraph 7 of
9 the applicable IWC Wage Orders. Defendants knowingly and intentionally failed to provide
10 Plaintiff and the Aggrieved Employees with such timely and accurate wage and hour statements.

11 104. Plaintiff and the Aggrieved Employees suffered injury as a result of Defendants'
12 knowing and intentional failure to provide them with the wage and hour statements as required by
13 law and are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e),
14 as the Defendants have failed to provide a wage statement, failed to provide accurate and complete
15 information as required by any one or more of items Labor Code § 226 (a)(1) to (9), inclusive, and
16 the Plaintiff and Aggrieved Employees cannot promptly and easily determine from the wage
17 statement alone one or more of the following: (i) The amount of the gross wages or net wages paid
18 to the employee during the pay period or any of the other information required to be provided on
19 the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a),
20 (ii) Which deductions the employer made from gross wages to determine the net wages paid to the
21 employee during the pay period, (iii) The name and address of the employer and, (iv) The name of
22 the employee and only the last four digits of his or her social security number or an employee
23 identification number other than a social security number. For purposes of Labor Code § 226(e)
24 "promptly and easily determine" means a reasonable person [i.e. an objective standard] would be
25 able to readily ascertain the information without reference to other documents or information.

26 105. Therefore, as a direct and proximate cause of Defendants' violation of Labor Code
27 § 226(a), and paragraph 7 of the applicable IWC Wage Orders, Employees suffered injuries,
28 including among other things confusion over whether they received all wages owed them, the

1 difficulty and expense involved in reconstructing pay records, and forcing them to make
2 mathematical computations to analyze whether the wages paid in fact compensated them correctly
3 for all hours worked. Labor Code § 226(e)(1) further instructs that: "An employee suffering injury
4 as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is
5 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
6 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
7 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
8 is entitled to an award of costs and reasonable attorney's fees." However, for PAGA claims arising
9 from violations of Section 226(a), Plaintiff need not establish injury or that Defendants acted
10 knowingly and intentionally in issuing inaccurate wage statements.

11 106. Plaintiff therefore seeks civil penalties under the PAGA against Defendants for
12 providing inaccurate wage statements and also for failure to maintain accurate Employee records
13 during the applicable statutory period.

14 107. To this end, Labor Code § 1174 provides that: "Every person employing labor in
15 this state shall:....(c) Keep a record showing the names and addresses of all employees employed
16 and the ages of all minors. (d) Keep, at a central location in the state or at the plants or
17 establishments at which employees are employed, payroll records showing the hours worked daily
18 by and the wages paid to, and the number of piece-rate units earned by and any applicable piece
19 rate paid to, employees employed at the respective plants or establishments. These records shall be
20 kept in accordance with rules established for this purpose by the commission, but in any case shall
21 be kept on file for not less than three years..."

22 108. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the
23 policies, practices and business acts of Defendants to the extent provided by law as a
24 Representative Action, including reasonable attorneys' fees and costs. As alleged in more detail
25 above, Defendants violated the above statutes by failing to maintain accurate payroll records
26 showing the hours worked daily by, and the wages paid to, Plaintiff and other aggrieved non-
27 exempt employees. Defendants' payroll records pertaining to Plaintiff and other aggrieved non-
28 exempt employees, and in turn the wage statements issued to them, fail to accurately reflect all

1 regular and overtime hours worked, overtime hourly rates, actual gross wages and net wages
2 earned, meal periods, and premium wages owed for denied lawful meal and rest periods.

3 109. Labor Code § 2699(f)(2) states that: “For all provisions of this code except those
4 for which a civil penalty is specifically provided, there is established a civil penalty for a violation
5 of these provisions, as follows ... (2) If, at the time of the alleged violation, the person employs
6 one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved
7 employee per pay period for the initial violation and two hundred dollars (\$200) for each
8 aggrieved employee per pay period for each subsequent violation.”

9 110. Labor Code § 2699.3 allows “(a) A civil action by an aggrieved employee pursuant
10 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
11 2699.5” to commence upon satisfaction of its written notice requirements. Additionally, Labor
12 Code § 2699.5 provides, in pertinent part that “[t]he provisions of subdivision (a) of Section
13 2699.3 apply to any alleged violation of the following provisions: [Labor Code §§] 226,...
14 subdivisions (c) and (d) of Section 1174,... 1198,... 1199,...” among the provisions of the Code
15 that allow for recovery of civil penalties pursuant to the PAGA.

16 111. Labor Code § 1198 also requires that: “The maximum hours of work and the
17 standard conditions of labor fixed by the commission shall be the maximum hours of work and the
18 standard conditions of labor for employees. The employment of any employee for longer hours
19 than those fixed by the order or under conditions of labor prohibited by the order is unlawful.”
20 Labor Code § 1198 therefore provides a basis in the Labor Code to recover for violations of the
21 IWC Wage Order provisions, and Labor Code § 2699.5 list Section 1198 as one of the provisions
22 for which a representative PAGA action may be commenced under Labor Code § 2699.3.

23 112. As such, Defendants are liable for PAGA penalties resulting from their failure to
24 provide accurate itemized wage statements to Plaintiff and the Aggrieved Employees and failure
25 to maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
26 1174, 1198, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s),
27 and Plaintiff seeks all civil and statutory penalties available and applicable under Labor Code §§
28 226(e), 226.3, 558, 1174.5, and 2699(f)(2), and also for attorneys’ fees and costs pursuant to

1 Labor Code § 2699(g)(1).

2 **SIXTH CAUSE OF ACTION**

3 **PENALTIES UNDER THE PAGA FOR FAILURE TO TIMELY PAY ALL WAGES**

4 **OWED IN VIOLATION OF LABOR CODE §§ 203, 204**

5 **(Against All Defendants)**

6 113. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
7 full herein.

8 114. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
9 employment are due and payable twice during each calendar month, on days designated in
10 advance by the employer as the regular paydays. Labor performed between the 1st and 15th days,
11 inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month
12 during which the labor was performed, and labor performed between the 16th and the last day,
13 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
14 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
15 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
16 calendar days following the close of the payroll period.” As detailed above, Defendants
17 maintained a consistently applied policy and practice of not paying all wages earned between the
18 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
19 between the 16th and the last day of the month between the 1st and 10th day of the following month.
20 Defendants similarly failed to pay all wages earned by not more than seven calendar days
21 following the close of the payroll period.

22 115. All wages due and owing to Plaintiff and the Aggrieved Employees, including as
23 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
24 wages required by Labor Code § 1194 and other sections became due and payable to each
25 employee in each pay period that he or she was not provided with a meal period or rest period or
26 paid straight or overtime wages to which he or she was entitled.

27 116. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
28 are required “to pay each employee, on the established payday for the period involved, not less than

1 the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code §
2 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under
3 conditions of labor prohibited by the order is unlawful.” Plaintiff and the Aggrieved Employees
4 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
5 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
6 IWC Wage Orders.

7 117. Plaintiff and numerous Aggrieved Employees are no longer employed by
8 Defendants; they either quit Defendants’ employ or were fired therefrom during the relevant
9 liability period. Plaintiff seeks civil penalties against Defendants for their failure to timely pay
10 Plaintiff and the Aggrieved Employee all wages owed during the applicable statutory period.
11 Defendants failed to pay these Employees all wages due and certain at the time of termination or
12 within seventy-two (72) hours of resignation. The wages withheld from these Employees by
13 Defendants remained due and owing for more than thirty (30) days from the date of separation
14 from employment.

15 118. Under Labor Code § 202, where an employee voluntarily quits his or her
16 employment without advance notice, all commission wages that can be reasonably calculated at
17 the time must be paid to the employee within 72 hours of termination of the employment
18 relationship.

19 119. Labor Code § 203 further provides: “(a) If an employer willfully fails to pay,
20 without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and
21 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall
22 continue as a penalty from the due date thereof at the same rate until paid or until an action
23 therefor is commenced; but the wages shall not continue for more than 30 days....”

24 120. Under Labor Code § 2926, “[a]n employee who is not employed for a specified
25 term and who is dismissed by his employer is entitled to compensation for services rendered up to
26 the time of such dismissal.” Also, under Labor Code § 2927, “[a]n employee who is not employed
27 for a specified term and who quits the service of his employer is entitled to compensation for
28 services rendered up to the time of such quitting.”

1 121. Defendants failed to pay Plaintiff and the Aggrieved Employees without abatement,
2 all wages as defined by applicable California law. Among other things, these Employees were not
3 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
4 or requiring off the clock work and failing to pay premium wages owed for unprovided meal
5 periods and rest periods, as further detailed in this Complaint. Defendants' failure to pay said
6 wages within the required time was willful within the meaning of Labor Code § 203.

7 122. All wages due and owing to Plaintiff and the Aggrieved Employees, including as
8 required under Labor Code § 510, were therefore not timely paid by Defendants. Additionally,
9 wages required by Labor Code § 1194 and other sections became due and payable to each
10 employee in each pay period that he or she was not provided with a meal period or rest period or
11 paid straight or overtime wages to which he or she was entitled.

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

19 124. Similarly, Section 20 of IWC Wage Order No. 1 addresses further penalties as
20 follows: "(A) In addition to any other civil penalties provided by law, any employer or any other
21 person acting on behalf of the employer who violates, or causes to be violated, the provisions of
22 this order, shall be subject to the civil penalty of: (1) Initial Violation — \$50.00 for each
23 underpaid employee for each pay period during which the employee was underpaid in addition to
24 the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations — \$100.00 for
25 each underpaid employee for each pay period during which the employee was underpaid in
26 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
27 receive payment of all wages recovered."

28 125. Plaintiff seeks to recover civil penalties pursuant to the PAGA that arise from the

1 policies, practices and business acts of Defendants to the extent provided by law as a
2 Representative Action, including reasonable attorneys' fees and costs, and as permitted by Labor
3 Code § 558, as a separate civil penalty provided by the PAGA statute.

4 126. Defendants violated the above statutes by failing to promptly pay Plaintiff and
5 other aggrieved non-exempt employees all earned wages due each and every pay period, as well as
6 immediately upon termination and/or within 72 hours upon resignation.

7 127. During the applicable statutory period, Defendants violated, and continue to
8 violate, California Labor Code § 204 and Section 20 of IWC Wage Orders by failing to
9 compensate Plaintiff and other aggrieved hourly employee overtime premium wages for overtime
10 hours worked, premium pay for denied off-duty meal and rest periods (wages), and other wages
11 due to Plaintiff and other Aggrieved Employees each pay period, as alleged in more detail herein.

12 128. Further, Defendants violated, and continue to violate, California Labor Code §§
13 201-204, 2926, and 2927 by failing to compensate employees, including Plaintiff and other
14 Aggrieved Employees no longer working for Defendants, for services rendered up to the time of
15 dismissal or quitting.

16 129. Labor Code § 2699(f)(2) states: "For all provisions of this code except those for
17 which a civil penalty is specifically provided, there is established a civil penalty for a violation

18 130. of these provisions, as follows ... (2) If, at the time of the alleged violation, the
19 person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each
20 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for
21 each aggrieved employee per pay period for each subsequent violation."

22 131. Labor Code § 2699.3 allows "(a) A civil action by an aggrieved employee pursuant
23 to subdivision (a) or (f) of Section 2699 alleging a violation of any provision listed in Section
24 2699.5" to commence upon satisfaction of its written notice requirements. Plaintiff has fully
25 complied with procedures specified in Labor Code § 2699.3. Additionally, Labor Code § 2699.5
26 provides, in pertinent part that "[t]he provisions of subdivision (a) of Section 2699.3 apply to any
27 alleged violation of the following provisions: "[Labor Code §§] 201,... 202, 203, ...204,...
28 558,...1198,...." among the provisions of the Code that allow for recovery of civil or statutory

1 penalties pursuant to the PAGA.

2 132. Defendants are liable for PAGA penalties resulting from their failure to timely pay
3 all wages owed to Plaintiff and other Aggrieved Employees at the time of their termination of
4 separation from employment, and failure to timely pay all wages owed twice monthly.
5 Accordingly, Plaintiff is entitled to recover, and hereby seeks through this Representative Action,
6 all civil and statutory penalties authorized for violations under Labor Code §§ 201, 201, 203, 204,
7 1197.5, 1198, 2926, and 2927, and Plaintiff seeks all civil penalties available and applicable under
8 Labor Code §§ 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable
9 IWC Wage Order(s), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

10 **SEVENTH CAUSE OF ACTION**

11 **PENALTIES UNDER THE PAGA FOR FAILURE TO REIMBURSE NECESSARY**

12 **BUSINESS EXPENSES, LABOR CODE § 2802**

13 **(Against All Defendants)**

14 133. Defendants' Plaintiff re-alleges and incorporates all preceding paragraphs, as
15 though set forth in full herein.

16 134. Plaintiff and Aggrieved Employees are informed and believe and based thereon
17 allege that throughout the period applicable, Defendants compelled Plaintiff and Aggrieved
18 Employees to pay out-of-pocket for necessary work related expenses they incurred for safety
19 equipment that was a requirement for employment with Defendants, such as personal cellular
20 phone usage and transportation expenses.

21 135. Plaintiff and Aggrieved Employees were not reimbursed for those lawful and
22 necessary work related expenses or losses incurred in direct discharge of their job duties during
23 employment with Defendants and at the direction of the Defendants pursuant to Labor Code §
24 2802(a) and the applicable IWC Wage Orders, paragraph 9.

25 136. Therefore, Plaintiff and Aggrieved Employees are entitled to reimbursement for
26 any and all necessary work-related expenses, as provided for in Labor Code § 2802(b), incurred
27 during the direct discharge of their duties while employed by Defendants, as well as accrued
28 interest on those expenses that were not reimbursed from the date Plaintiff and Aggrieved

1 Employees incurred those expenses.

2 137. Further, Plaintiff and Aggrieved Employees are entitled to costs and attorney's fees
3 pursuant to Labor Code § 2802(c).

4 **RELIEF REQUESTED**

5 WHEREFORE, Plaintiff prays for the following relief:

6 1. On the First Cause of Action: For recovery of all civil penalties for unpaid
7 minimum and regular wages for all hours worked during the applicable statutory period as
8 permitted by California Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K),
9 4, and 20 of the applicable IWC Wage Order(s), including civil and statutory penalties available
10 and applicable, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, to
11 be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery to the
12 LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to proof and
13 subject to approval by the Court;

14 2. On the Second Cause of Action: For recovery of all civil penalties for unpaid
15 overtime and premium wages for all hours worked during the applicable statutory period as
16 permitted by Labor Code §§ 510, 1194, 1197, 1197.1, 1198, and 204 and Sections 2(K), 4, and 20
17 of the applicable IWC Wage Order(s), including all civil and statutory penalties available and
18 applicable, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, with
19 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
20 amount according to proof and subject to approval by the Court;

21 3. On the Third Cause of Action: For recovery of all civil penalties for non-compliant
22 meal periods during the applicable statutory period and failure to pay one-hour of premium wages
23 to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7, 512, 558, and
24 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil and statutory
25 penalties available and applicable under Labor Code §§ 226.7, 512, 558, including sections
26 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor Code §
27 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
28 Employees in an amount according to proof and subject to approval by the Court.

1 4. On the Fourth Cause of Action: For recovery of all civil penalties for non-
2 compliant rest periods during the applicable statutory period and failure to pay one-hour of
3 premium wages to Plaintiff and the Aggrieved Employees as permitted by Labor Code §§ 226.7,
4 512, 558, and 1198, and Section 11(A)-(D) of the applicable IWC Wage Orders, including all civil
5 and statutory penalties available and applicable under Labor Code §§ 226.7, 512, 558, including
6 sections 558(a)(1)-(3), 2699.3, and 2699(f)(2), to be distributed in the manner provided by Labor
7 Code § 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
8 Employees in an amount according to proof and subject to approval by the Court.

9 5. On the Fifth Cause of Action: For recovery of all civil penalties for inaccurate wage
10 statements Defendants provided to Plaintiff and the Aggrieved Employees and failure to maintain
11 employment records as permitted by Labor Code §§ 226, 1174, 1198, and 1198.5, and Sections
12 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s), including all civil and statutory
13 penalties available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, and
14 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of
15 recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount
16 according to proof and subject to approval by the Court;

17 6. On the Sixth Cause of Action: For recovery of all civil penalties pursuant to Labor
18 Code § 2699(f)(2) where a statutory civil penalty is not provided, for Defendants' unlawful
19 deductions from wages paid to Aggrieved Employees as permitted under California Labor Code
20 §§ 1197, 1197.1, 1198 and Sections 2(K), 4, and 20 of the applicable IWC Wage Order(s),
21 including for all civil and statutory penalties available and applicable under Labor Code §§ 1197,
22 1197.1, 1199, 2699(f)(2), and 2699.5, to be distributed in the manner provided by Labor Code §
23 2699(i), with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved
24 Employees in an amount according to proof and subject to approval by the Court.

25 7. On the Seventh Cause of Action: For recovery of all civil penalties pursuant to
26 Labor Code § 2699(f)(2) where a statutory civil penalty is not provided, for failing to timely pay
27 all wages owed and to timely pay them to Aggrieved Employees upon termination or separation
28 from employment as permitted under Labor Code §§ 201, 201, 203, 204, 1197.5, 1198, 2926, and

1 2927, including all civil and statutory penalties, available and applicable under Labor Code §§
2 201, 202, 203, 210, 558, 1197, and 2699(f)(2), and Section 20 of the applicable IWC Wage
3 Order(s), to be distributed in the manner provided by Labor Code § 2699(i), with 75% of recovery
4 to the LWDA and 25% of the recovery to the Aggrieved Employees in an amount according to
5 proof and subject to approval by the Court;

6 8. On the Eighth Cause of Action: For recovery of all civil penalties for Defendants'
7 failure to reimburse all necessary business expenses incurred by Plaintiff and the Aggrieved
8 Employees as permitted by Labor Code §§ 1198 and 2802, and Section 9(B) of the applicable
9 IWC Wage Orders, including all civil and statutory penalties available and applicable under Labor
10 Code §§ 2802 and 2699(f)(2), to be distributed in the manner provided by Labor Code § 2699(i),
11 with 75% of recovery to the LWDA and 25% of the recovery to the Aggrieved Employees in an
12 amount according to proof and subject to approval by the Court.

13 9. For reasonable attorneys' fees and costs of suit to the extent permitted under the
14 PAGA and applicable Labor Code sections, including Labor Code § 2699(g)(1), in an amount
15 according to proof and subject to Court approval.

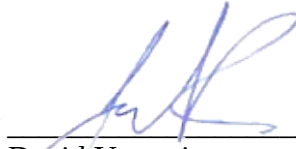
16 10. For pre-judgment and post-judgment interest at the legal rate of 10% in the State of
17 California on readily calculable monies due to the extent provided by California law and
18 authorized under the PAGA, in an amount according to proof;

19 11. For the Court to otherwise determine the appropriate remedy to compensate
20 Plaintiff and each Aggrieved Employee as required to promote fairness and justice; and

21 12. For such other and further relief as this Court may deem necessary, proper and/or
22 just.

23 DATED: October 21, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

24
25
26 By 
27 David Yeremian
28 Jason Rothman
Attorneys for Plaintiff Edward Morales
Tellez, and all others similarly situated

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DATED: October 21, 2020

By

David Yermian
Jason Rothman
Attorneys for Plaintiff Edward Morales
Tellez, and all others similarly situated

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PROOF OF SERVICE

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES:

I am employed in the aforesaid county, State of California; I am over the age of 18 years and not a party to the within action; my business address is 535 N. Brand, Blvd. Suite 705, Glendale CA 91203.

On November 5, 2020, I served the foregoing: **FIRST AMENDED COMPLAINT FOR REPRESENTATIVE ACTION FOR PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE § 2698 et seq.** on Interested Parties in this action by placing a true copy thereof, enclosed in a sealed envelope, addressed as follows:

Lizbeth Ochoa
lochoa@fisherphillips.com
Sean Kingston
skingston@fisherphillips.com
Elizabeth Toller
etoller@fisherphillips.com
FISHER & PHILLIPS LLP
2050 Main Street, Suite 1000
Irvine, CA 92614

[X] (BY MAIL) I placed such envelope with postage thereon fully paid in the United States mail at Glendale, California. I am “readily familiar” with this firm’s practice of collecting and processing correspondence for mailing. It is deposited with U.S. Postal Service on that same day in the ordinary course of business. I am aware that on motion of party served, service is presumed invalid if postal cancellation date or postage meter date is more than 1 day after date of deposit for mailing in affidavit.

[] (ONLY BY ELECTRONIC TRANSMISSION) Only by e-mailing the document(s) to the persons at the e-mail address(es) listed based on notice provided on **November 5, 2020** that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely, not able to send physical mail as usual, and is therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

[] (BY OVERNIGHT DELIVERY) I enclosed the documents in an envelope or package provided by an overnight delivery carrier and addressed to the persons at the address above. I placed the envelope or package for collection and overnight delivery at an office or a regularly utilized drop box of the overnight delivery carrier.

[X] (STATE) I certify (or declare) under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 5, 2020, at Glendale, California.


Natalia Bermudes