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11 and on behalf of all others similarly situated

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF LOS ANGELES**

14 EDGAR PENATE, individually and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 vs.

18 GLOBAL FREIGHT SOLUTIONS, INC.;
19 and DOES 1 through 20, inclusive,

20 Defendants.

Case No.: 20STCV18828

Assigned for All Purposes to:
Hon. Judge Daniel J. Buckley
Dept.: 1

[Amended as a matter of right, pursuant to
Labor Code section 2699.3(a)(2)(C)]

FIRST AMENDED CLASS ACTION
COMPLAINT FOR:

1. Failure to Provide Meal Periods;
2. Failure to Permit Rest Breaks;
3. Failure to Provide Accurate Itemized Wage Statements;
4. Failure to Pay All Wages Due Upon Separation of Employment;
5. Failure to Reimburse Necessary Business Expenses;
6. Violation of Business and Professions Code §§ 17200, *et seq.*; and
7. Enforcement of Labor Code § 2698 *et seq.* ("PAGA")

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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JUL 29 2020

Sherri R. Carter, Executive Officer
By Paul R. Cruz, Deputy

1 Plaintiff Edgar Penate, individually, and on behalf of others similarly situated, alleges
2 as follows:

3 **NATURE OF ACTION AND INTRODUCTORY STATEMENT**

4 1. Plaintiff Edgar Penate (“Plaintiff”) brings this putative class and representative
5 action pursuant to the Private Attorneys General Act of 2004, Cal. Lab. Code. § 2698 *et seq.*,
6 against defendants Global Freight Solutions, Inc. and DOES 1 through 20, inclusive
7 (collectively, “Defendants”), on behalf of himself individually and on behalf of California
8 citizens who are and were employed by Defendants as non-exempt employees throughout
9 California.

10 2. Defendants are in the business of providing logistical and freight services
11 throughout California.

12 3. Through this action, Plaintiff alleges that Defendants have engaged in a
13 systematic pattern of wage and hour violations under the California Labor Code and Industrial
14 Welfare Commission (“IWC”) Wage Orders, all of which contribute to Defendants’ deliberate
15 unfair competition.

16 4. Plaintiff is informed and believes, and thereon alleges, that Defendants have
17 increased their profits by violating state wage and hour laws by, among other things:

- 18 (a) Failing to provide lawful meal periods or compensation in lieu thereof;
- 19 (b) Failing to authorize or permit lawful rest breaks or provide compensation
20 in lieu thereof;
- 21 (c) Failing to provide accurate itemized wage statements;
- 22 (d) Failing to pay all wages due upon separation of employment; and
- 23 (e) Failing to reimburse all business expenses incurred by the employee in
24 direct consequence of the discharge of his or her duties.

25 5. Plaintiff seeks monetary relief against Defendants on behalf of himself and all
26 others similarly situated in California to recover, among other things, unpaid wages and
27 benefits, interest, attorneys’ fees, costs and expenses, and penalties pursuant to Labor Code §§
28 201-204, 210, 226, 226.3, 226.7, 512, 558, 1174, 1174.5, 2800, 2802, 2698, *et seq.*, and Code

1 of California Civil Procedure § 1021.5.

2 **JURISDICTION AND VENUE**

3 6. This is a class action pursuant to California Code of Civil Procedure § 382. The
4 monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdictional limits
5 of the Superior Court and will be established according to proof at trial.

6 7. This Court has jurisdiction over this action pursuant to the California
7 Constitution, Article VI, § 10, which grants the Superior Court original jurisdiction in all
8 causes except those given by statutes to other courts. The statutes under which this action is
9 brought do not specify any other basis for jurisdiction.

10 8. This Court has jurisdiction over all Defendants because, upon information and
11 belief, they are citizens of California, have sufficient minimum contacts in California, or
12 otherwise intentionally avail themselves of the California market so as to render the exercise of
13 jurisdiction over them by the California courts consistent with traditional notions of fair play
14 and substantial justice.

15 9. Venue is proper in this Court because, upon information and belief, Defendants
16 reside, transact business, or have offices in this county, or the acts and omissions alleged herein
17 took place in this county.

18 **THE PARTIES**

19 10. Plaintiff is a citizen of California. Plaintiff was employed by Defendants during
20 the Class Period in California.

21 11. Plaintiff is informed and believes, and thereon alleges that at all times
22 hereinafter mentioned, Defendants were and are subject to the Labor Code and IWC Wage
23 Orders as employers, whose employees were and are engaged throughout this county and the
24 State of California.

25 12. Plaintiff is unaware of the true names or capacities of the defendants sued herein
26 under the fictitious names DOES 1 through 20, but will seek leave of this Court to amend this
27 Complaint and serve such fictitiously named defendants once their names and capacities
28 become known.

13. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 20 are or were the partners, agents, owners, shareholders, managers, or employees of Defendants at all relevant times.

14. 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 defendant, carried out a joint scheme, business plan, or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable to the other defendant. Furthermore, defendants in all respects acted as the employer and/or joint employer of Plaintiff and the class members.

15. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein were performed by, or are attributable to, Defendants and/or DOES 1 through 20, acting as the agent or alter ego for the other, with legal authority to act on the other's behalf. The acts of any and all Defendants were in accordance with, and represent, the official policy of Defendants.

16. At all relevant times, Defendants, and each of them, acted within the scope of such agency or employment, or ratified each and every act or omission complained of herein. At all relevant times, Defendants, and each of them, aided and abetted the acts and omissions of each and all the other Defendants in proximately causing the damages herein alleged.

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

CLASS ACTION ALLEGATIONS

18. Plaintiff brings this action under Code of Civil Procedure § 382 on behalf of himself and all others similarly situated who were affected by Defendants' Labor Code, Business and Professions Code §§ 17200, *et. seq.*, and IWC Wage Order violations.

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

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

Class

1 All California citizens currently or formerly employed by Defendants as non-
2 exempt employees in the State of California at any time between April 6, 2016¹
3 and the date of class certification (“Class”).

4 21. Plaintiff also seeks to certify the following subclass of employees:

5 Waiting Time Subclass

6 All Class Members who separated their employment with Defendants at any time
7 between April 6, 2017 and the date of class certification (“Subclass” or “Waiting
8 Time Subclass”).

9 22. Plaintiff reserves the right to establish other or additional subclasses, or modify
10 or re-define the Class, or any class or subclass definition as appropriate based on investigation,
11 discovery, and specific theories of liability.

12 23. Members of the Class and the Subclass described above will be collectively
13 referred to as “Class Members.”

14 24. There are common questions of law and fact as to the Class Members that
15 predominate over any questions affecting only individual members including, but not limited to,
16 the following:

- 17 (a) Whether Defendants deprived Plaintiff and Class Members of timely
18 meal periods or required Plaintiff and Class Members to work through
19 meal periods without compensation;
- 20 (b) Whether Defendants deprived Plaintiff and Class Members of rest breaks
21 or required Plaintiff and Class Members to work through rest breaks
22 without compensation;
- 23 (c) Whether Defendants failed to provide Plaintiff and Class Members
24 accurate itemized wage statements;
- 25 (d) Whether Defendants failed to timely pay Plaintiff and the Subclass all
26 wages due upon termination or within seventy-two (72) hours of

27 ¹ The statute of limitations for this matter was tolled pursuant to Cal. Rules of Court, Appendix I,
28 Emergency Rule No. 9.

1 resignation;

2 (e) Whether Defendants required Plaintiff and class members to incur
3 expenses for work and then failed to adequately reimburse Plaintiff and
4 Class Members for such expenses;

5 (f) Whether Defendants' conduct was willful or reckless; and

6 (g) Whether Defendants engaged in unfair business practices in violation of
7 Business and Professions Code §§ 17200, *et seq.*

8 25. There is a well-defined community of interest in this litigation and the proposed
9 Class and Subclass are readily ascertainable:

10 (a) Numerosity: The Class Members are so numerous that joinder of all
11 members is impractical. Although the members of the entire Class and Subclass are unknown
12 to Plaintiff at this time, on information and belief, the class is estimated to be greater than one
13 100 individuals. The identities of the Class Members are readily ascertainable by inspection of
14 Defendants' employment and payroll records.

15 (b) Typicality: The claims (or defenses, if any) of Plaintiff are typical of the
16 claims (or defenses, if any) of the Class Members because Defendants' failure to comply with
17 the provisions of California's wage and hour laws entitled each Class Member to similar pay,
18 benefits, and other relief. The injuries sustained by Plaintiff are also typical of the injuries
19 sustained by the Class Members, because they arise out of and are caused by Defendants'
20 common course of conduct as alleged herein.

21 (c) Adequacy: Plaintiff will fairly and adequately represent and protect the
22 interests of all Class Members because it is in his best interest to prosecute the claims alleged
23 herein to obtain full compensation and penalties due to him and the Class Members. Plaintiff's
24 attorneys, as proposed class counsel, are competent and experienced in litigating large
25 employment class actions and versed in the rules governing class action discovery,
26 certification, and settlement. Plaintiff has incurred and, throughout the duration of this action,
27 will continue to incur attorneys' fees and costs that have been and will be necessarily expended
28 for the prosecution of this action for the substantial benefit of the Class Members.

1 (d) Superiority: The nature of this action makes use of class action
2 adjudication superior to other methods. A class action will achieve economies of time, effort,
3 and expense as compared with separate lawsuits and will avoid inconsistent outcomes because
4 the same issues can be adjudicated in the same manner for the entire Class and Subclass at the
5 same time. If appropriate, this Court can, and is empowered to, fashion methods to efficiently
6 manage this case as a class action.

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

14 **GENERAL ALLEGATIONS**

15 26. At all relevant times mentioned herein, Defendants employed Plaintiff and other
16 California residents as non-exempt employees at Defendants' California business location(s).

17 27. Defendants continue to employ non-exempt employees within California.

18 28. Plaintiff is informed and believes, and thereon alleges, that at all times herein
19 mentioned, Defendants were advised by skilled lawyers, employees, and other professionals
20 who were knowledgeable about California's wage and hour laws, employment and personnel
21 practices, and the requirements of California law.

22 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and Class Members were entitled to receive all required meal
24 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
25 rate of pay when they did not receive a timely, uninterrupted meal period. In violation of the
26 Labor Code and IWC Wage Orders, Plaintiff and Class Members did not receive all meal
27 periods or payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular
28 rate of pay when they did not receive a timely, uninterrupted meal period.

1 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
2 should have known that Plaintiff and Class Members were entitled to receive all rest breaks or
3 payment of one (1) additional hour of pay at Plaintiff's and Class Members' regular rate of pay
4 when a rest break was missed. In violation of the Labor Code and IWC Wage Orders, Plaintiff
5 and Class Members did not receive all rest breaks or payment of one (1) additional hour of pay
6 at Plaintiff's and Class Members' regular rate of pay when a rest break was missed.

7 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to reimbursement for
9 necessary expenditures incurred in connection with the performance and execution of their job
10 duties. In violation of the California Labor Code, Plaintiff and class members did not receive
11 adequate reimbursement for necessary business expenses, including, but not limited to,
12 reimbursement for protective equipment, such as outerwear for work in the freezer.

13 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that the Class Members were entitled to receive itemized wage statements
15 that accurately showed the gross and net wages earned, total hours worked, all applicable
16 hourly rates in effect, and the number of hours worked at each hourly rate in accordance with
17 California law. In violation of the Labor Code, the Class Members were not provided with
18 accurate itemized wage statements.

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that the Waiting Time Subclass members were entitled to timely payment
21 of wages due upon separation of employment. In violation of the Labor Code, the Waiting
22 Time Subclass did not receive payment of all wages within permissible time periods.

23 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known they had a duty to compensate Plaintiff and Class Members, and
25 Defendants had the financial ability to pay such compensation but willfully, knowingly, and
26 intentionally failed to do so in order to increase Defendants' profits.

27 35. Therefore, Plaintiff brings this lawsuit seeking monetary and injunctive relief
28 against Defendants on behalf of himself and all Class Members to recover, among other things,

1 unpaid wages, unpaid meal period premium payments, unpaid rest period premium payments,
2 interest, attorneys' fees, penalties, costs, and expenses.

3 **FIRST CAUSE OF ACTION**

4 **FAILURE TO PROVIDE MEAL PERIODS**

5 (Violation of Labor Code §§ 226.7 and 512; Violation of IWC Wage Order § 11)

6 36. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
7 though fully set forth herein

8 37. Labor Code § 226.7 provides that no employer shall require an employee to work
9 during any meal period mandated by the IWC Wage Orders.

10 38. Section 11 of the applicable IWC Wage Order states, "[n]o employer shall
11 employ any person for a work period of more than five (5) hours without a meal period of not
12 less than 30 minutes, except that when a work period of not more than six (6) hours will
13 complete the day's work the meal period may be waived by mutual consent of the employer and
14 the employee."

15 39. Labor Code § 512(a) provides that an employer may not require, cause, or permit
16 an employee to work for a period of more than five (5) hours per day without providing the
17 employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if
18 the total work period per day of the employee is not more than six (6) hours, the meal period
19 may be waived by mutual consent of both the employer and the employee.

20 40. Labor Code § 512(a) also provides that an employer may not employ an
21 employee for a work period of more than ten (10) hours per day without providing the employee
22 with a second meal period of not less than thirty (30) minutes, except that if the total hours
23 worked is no more than twelve (12) hours, the second meal period may be waived by mutual
24 consent of the employer and the employee only if the first meal period was not waived.

25 41. During the relevant time period, Plaintiff and Class Members did not receive
26 compliant meal periods for working more than five (5) and/or ten (10) hours per day because
27 their meal periods were missed, late, short, and/or they were not permitted to take meal periods.

28 42. Labor Code § 226.7(b) and section 11 of the applicable IWC Wage Order require

1 an employer to pay an employee one (1) additional hour of pay at the employee's regular rate of
2 compensation for each work day that a compliant meal period is not provided.

3 43. At all relevant times, Defendants failed to pay Plaintiff and Class Members meal
4 period premiums for missed, late, and/or short meal periods pursuant to Labor Code § 226.7(b)
5 and section 11 of the applicable IWC Wage Order.

6 44. As a result of Defendants' failure to pay Plaintiff and Class Members an
7 additional hour of pay for each day a compliant meal period was not provided, Plaintiff and
8 Class Members suffered and continue to suffer a loss of wages and compensation.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PERMIT REST BREAKS**

11 (Violation of Labor Code § 226.7; Violation of IWC Wage Order § 12)

12 45. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
13 though fully set forth herein.

14 46. Labor Code § 226.7(a) provides that no employer shall require an employee to
15 work during any rest period mandated by the IWC Wage Orders.

16 47. Section 12 of the applicable IWC Wage Order states "[e]very employer shall
17 authorize and permit all employees to take rest periods, which insofar as practicable shall be in
18 the middle of each work period[,]" and the "[a]uthorized rest period time shall be based on the
19 total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major
20 fraction thereof[,]" unless the total daily work time is less than three and one-half (3½) hours.

21 48. During the relevant time period, Plaintiff and Class Members did not receive a
22 ten (10) minute rest period for every four (4) hours or major fraction thereof worked because
23 they were required to work through their daily rest periods and/or were not authorized to take
24 their rest periods.

25 49. Labor Code § 226.7(b) and section 12 of the applicable IWC Wage Order
26 requires an employer to pay an employee one (1) additional hour of pay at the employee's
27 regular rate of compensation for each work day that a compliant rest period is not provided.

28 50. At all relevant times, Defendants failed to pay Plaintiff and Class Members rest

1 period premiums for missed, late, and/or interrupted rest periods pursuant to Labor Code §
2 226.7(b) and section 12 of the applicable IWC Wage Order.

3 51. As a result of Defendants' failure to pay Plaintiff and Class Members an
4 additional hour of pay for each day a compliant rest period was not provided, Plaintiff and Class
5 Members suffered and continue to suffer a loss of wages and compensation.

6 **THIRD CAUSE OF ACTION**

7 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

8 (Violation of Labor Code § 226)

9 52. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
10 though fully set forth herein.

11 53. Labor Code § 226(a) requires Defendants to provide each employee with an
12 accurate wage statement in writing showing nine pieces of information, including, the
13 following: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of
14 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate
15 basis, (4) all deductions, provided that all deductions made on written orders of the employee
16 may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the
17 period for which the employee is paid, (7) the name of the employee and the last four digits of
18 his or her social security number or an employee identification number other than a social
19 security number, (8) the name and address of the legal entity that is the employer, and (9) all
20 applicable hourly rates in effect during the pay period and the corresponding number of hours
21 worked at each hourly rate by the employee.

22 54. During the relevant time period, Defendants have knowingly and intentionally
23 failed to comply with Labor Code § 226(a) on wage statements that were provided to the Class
24 Members. The deficiencies include, among other things, the failure to correctly state the gross
25 and net wages earned, total hours worked, all applicable hourly rates in effect, and the number
26 of hours worked at each hourly rate by the Class Members.

27 55. As a result of Defendants' knowing and intentional failure to comply with Labor
28 Code § 226(a), the Class Members suffered injury and damage to their statutorily-protected

1 rights. Specifically, the Class Members are deemed to suffer an injury pursuant to Labor Code
2 § 226(e) where, as here, Defendants intentionally violated Labor Code § 226(a). The Class
3 Members were denied both their legal right to receive, and their protected interest in receiving,
4 accurate itemized wage statements under Labor Code § 226(a). Plaintiff has had to file this
5 lawsuit in order to analyze the extent of the underpayment, thereby causing Plaintiff to incur
6 expenses and lost time. Plaintiff would not have had to engage in these efforts and incur these
7 costs had Defendants provided the accurate hours worked, wages earned, and rates of pay. This
8 has also delayed Plaintiff's ability to demand and recover the underpayment of wages from
9 Defendants.

10 56. The Class Members are entitled to recover from Defendants the greater of all
11 actual damages caused by Defendants' failure to comply with Labor Code § 226(a) or fifty
12 dollars (\$50.00) for the initial pay period in which a violation occurred and one hundred dollars
13 (\$100.00) per employee for each violation in subsequent pay periods in an amount not
14 exceeding four thousand dollars (\$4,000.00) per employee, plus attorneys' fees and costs.

15 57. Defendants' violations of California Labor Code § 226(a) prevented the Class
16 Members from knowing, understanding, and disputing the wages paid to them and resulted in
17 an unjustified economic enrichment to Defendants. As a result of Defendants' knowing and
18 intentional failure to comply with California Labor Code § 226(a), the Class Members have
19 suffered an injury, in the exact amount of damages and/or penalties to be shown according to
20 proof at trial.

21 58. The Class Members are also entitled to injunctive relief under California Labor
22 Code § 226(h), compelling Defendants to comply with California Labor Code § 226.
23 Accordingly, the Class Members seek the recovery of attorneys' fees and costs incurred in
24 obtaining this injunctive relief.

25 **FOURTH CAUSE OF ACTION**

26 **FAILURE TO PAY ALL WAGES DUE UPON SEPARATION OF EMPLOYMENT**

27 (Violation of Labor Code §§ 201, 202, and 203)

28 59. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as

1 though fully set forth herein.

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

8 61. During the relevant time period, Defendants willfully failed to pay the Waiting
9 Time Subclass all their earned wages upon termination, including, but not limited to, meal
10 period premiums, and rest period premiums either at the time of discharge or within seventy-
11 two (72) hours of their leaving Defendants' employ.

12 62. Defendants' failure to pay the Waiting Time Subclass all their earned wages at
13 the time of discharge or within seventy-two (72) hours of their leaving Defendants' employ is
14 in violation of Labor Code §§ 201 and 202.

15 63. Labor Code § 203 provides that if an employer willfully fails to pay wages owed
16 immediately upon discharge or resignation in accordance with Labor Code §§ 201 and 202,
17 then the wages of the employee shall continue as a penalty from the due date at the same rate
18 until paid or until an action is commenced; but the wages shall not continue for more than thirty
19 (30) days.

20 64. Pursuant to Labor Code § 203, the Waiting Time Subclass is entitled to recover
21 from Defendants the statutory penalty, which is defined as the Waiting Time Subclass
22 members' regular daily wages at their regular hourly rate of pay for each day they were not
23 paid, up to a maximum of thirty (30) days.

24 **FIFTH CAUSE OF ACTION**

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 (Violation of Labor Code §§ 2800, 2802)

27 65. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as
28 though fully set forth herein.

66. Labor Code § 2800 states that an employer shall in all cases indemnify his employee for losses.

67. Labor Code § 2802 requires employers to indemnify their employees for all necessary expenditures or losses incurred by employees in direct consequence of the discharge of their duties.

68. Section 9 of the applicable IWC Wage Order states that when tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.

69. During the relevant time period, Defendants required Plaintiff and class members to incur expenses without properly compensating them for such expenses.

70. In violation of Labor Code §§ 2800 and 2802, Defendants failed to indemnify Plaintiff and class members for these expenses.

71. In committing the violations as herein alleged, Defendants have intentionally and willfully failed to fully reimburse Plaintiff and class members for necessary business-related costs and expenses. As a direct result, Plaintiff and class members have suffered and continue to suffer substantial losses relating to the use and enjoyment of such compensation, wages, expenses, and attorney's fees.

SIXTH CAUSE OF ACTION

VIOLATION OF BUSINESS AND PROFESSIONS CODE §§ 17200, ET SEQ.

(Violation of Business and Professions Code §§ 17200, *et seq.*)

72. Plaintiff hereby re-alleges and incorporates by reference all paragraphs above as though fully set forth herein.

73. California Business and Professions Code §§ 17200, *et seq.*, prohibits acts of unfair competition, which includes any “unlawful, unfair or fraudulent business act or practice . . .”

74. A violation of California Business and Professions Code §§ 17200, *et seq.*, may be predicated on a violation of any state or federal law. In the instant case, Defendants' policies and practices violated state law, causing Plaintiff and Class Members to suffer and continue to

1 suffer injuries-in-fact.

2 75. Defendants' policies and practices violated state law in at least the following
3 respects:

- 4 (a) Failing to provide compliant meal periods without paying Plaintiff and
5 Class Members premium wages for every day said meal periods were not
6 provided in violation of Labor Code §§ 226.7 and 512;
- 7 (b) Failing to authorize or permit compliant rest breaks without paying
8 Plaintiff and Class Members premium wages for every day said rest
9 breaks were not authorized or permitted in violation of Labor Code §
10 226.7;
- 11 (c) Failing to provide the Class Members with accurate itemized wage
12 statements in violation of Labor Code § 226;
- 13 (d) Failing to timely pay all earned wages to the members of the Waiting
14 Time Subclass upon separation of employment in violation of Labor
15 Code §§ 201, 202, and 203; and
- 16 (e) Failing to reimburse business expenses in violation of Labor Code §§
17 2800 and 2802.

18 76. As alleged herein, Defendants systematically engaged in unlawful conduct in
19 violation of the California Labor Code and IWC Wage Orders, such as failing to provide meal
20 periods and rest periods or compensation in lieu thereof, failing to furnish accurate wage
21 statements, failing to pay all wages due and owing upon separation of employment in a timely
22 manner, and failing to reimburse business expenses, all in order to decrease their costs of doing
23 business and increase their profits.

24 77. At all relevant times herein, Defendants held themselves out to Plaintiff and
25 Class Members as being knowledgeable concerning the labor and employment laws of
26 California.

27 78. At the time Plaintiff and Class Members were hired, Defendants knowingly,
28 intentionally, and wrongfully misrepresented to each of them their conformance with the

1 California Labor Code and IWC Wage Orders, including proper payments required by law.

2 79. At all times relevant herein, Plaintiff and Class Members relied on and believed
3 Defendants' representations concerning their conformance with California's wage and hour
4 laws all to their detriment.

5 80. At all times relevant herein, Defendants intentionally avoided paying Plaintiff
6 and Class Members wages and monies, thereby creating for Defendants an artificially lower
7 cost of doing business in order to undercut their competitors and establish and/or gain a greater
8 foothold in the marketplace.

9 81. As a result of Defendants' intentional, willful, purposeful, and wrongful
10 misrepresentation of their conformance with the California Labor Code and IWC Wage Orders,
11 Plaintiff and Class Members suffered a loss of wages and monies, all in an amount to be shown
12 according to proof at trial.

13 82. By violating the foregoing statutes and regulations as herein alleged,
14 Defendants' acts constitute unfair and unlawful business practices under California Business
15 and Professions Code §§ 17200, *et seq.*

16 83. As a result of the unfair and unlawful business practices of Defendants, as
17 alleged herein, Plaintiff and Class Members are entitled to injunctive relief, disgorgement, and
18 restitution in an amount to be shown according to proof at trial.

19 84. Plaintiff seeks to enforce important rights affecting the public interest within the
20 meaning of California Code of Civil Procedure § 1021.5. Defendants' conduct, as alleged
21 herein, has been and continues to be unfair, unlawful, and harmful to Plaintiff, Class Members,
22 and the general public. Based on Defendants' conduct as alleged herein, Plaintiff and Class
23 Members are entitled to an award of attorneys' fees pursuant to California Code of Civil
24 Procedure § 1021.5.

25 SEVENTH CAUSE OF ACTION

26 **ENFORCEMENT OF LABOR CODE §§ 2698 ET SEQ. ("PAGA")**

27 85. Plaintiff hereby re-alleges and incorporate by reference the previous paragraphs as
28 though fully set forth herein.

1 86. Pursuant to Labor Code § 2699(a), any provision of the Labor Code that provides
2 for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency
3 (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees for
4 violation of the Labor Code may, as an alternative, be recovered through a civil action brought by
5 an aggrieved employee on behalf of himself or herself and other current or former employees
6 pursuant to the procedures specified in Labor Code § 2699.3.

7 87. For all provisions of the Labor Code except those for which a civil penalty is
8 specifically provided, Labor Code § 2699(f) imposes upon Defendants a penalty of one hundred
9 dollars (\$100.00) for each aggrieved employee per pay period for the initial violation and two
10 hundred dollars (\$200.00) for each aggrieved employee per pay period for each subsequent pay
11 period in which Defendants violated these provisions of the Labor Code.

12 88. Defendants’ conduct violates numerous Wage Order and Labor Code sections,
13 including, but not limited to, the following:

- 14 a. violation of Labor Code §§ 201-204 and 210 for failure to timely pay all
15 earned wages owed to Plaintiff and other aggrieved employees during
16 employment and upon separation of employment as herein alleged;
- 17 b. violation of Labor Code §§ 226.7 and 512 for failure to provide meal
18 periods to Plaintiff and other aggrieved employees and failure to pay
19 premium wages for missed meal periods as herein alleged;
- 20 c. violation of Labor Code § 226.7 for failure to permit rest breaks to
21 Plaintiff and other aggrieved employees and failure to pay premium wages
22 for missed rest periods as herein alleged;
- 23 d. violation of Labor Code § 226 for failure to provide accurate itemized
24 wage statements to Plaintiff and other aggrieved employees as herein
25 alleged;
- 26 e. violation of Labor Code §§ 1174 and 1174.5 for failure to maintain
27 accurate and complete records showing, among other things, the hours
28

1 worked daily by and the wages paid to aggrieved employees as herein
2 alleged; and

3 f. violation of Labor Code §§ 2800 and 2802 for failure to reimburse
4 necessary business expenses to Plaintiff and other aggrieved employees.

5 89. Plaintiff is an “aggrieved employee” because he was employed by the alleged
6 violator and had one or more of the violations committed against him, and therefore is properly
7 suited to represent the interests of all other aggrieved employees.

8 90. Plaintiff has exhausted the procedural requirements under Labor Code § 2699.3 as
9 to Defendants and is therefore able to pursue a claim for penalties on behalf of himself and all
10 other aggrieved employees under PAGA.

11 91. Pursuant to Labor Code §§ 2699(a), 2699.3 and 2699.5, Plaintiff is entitled to
12 recover civil penalties, in addition to other remedies, for violations of the Labor Code sections
13 cited above.

14 92. For bringing this action, Plaintiff is entitled to attorney’s fees and costs incurred
15 herein.

16 **PRAYER FOR RELIEF**

17 Plaintiff, on his own behalf and on behalf of all others similarly situated, prays for relief
18 and judgment against Defendants, jointly and severally, as follows:

19 1. For certification under California Code of Civil Procedure § 382 of the proposed
20 Class, Waiting Time Subclass, and any other appropriate subclasses;

21 2. For appointment of Edgar Penate as the class representative;

22 3. For appointment of Aegis Law Firm, PC, as class counsel for all purposes;

23 4. For compensatory damages in an amount according to proof at trial;

24 5. For an award of damages in the amount of unpaid compensation including, but
25 not limited to, unpaid wages, benefits, and penalties;

26 6. For economic and/or special damages in an amount according to proof at trial;

27 7. For statutory penalties to the extent permitted by law, including those pursuant
28 to the Labor Code and IWC Wage Orders;

1 8. For injunctive relief as provided by the California Labor Code and California
2 Business and Professions Code §§ 17200, *et seq.*;

3 9. For restitution as provided by Business and Professions Code §§ 17200, *et seq.*;

4 10. For an order requiring Defendants to restore and disgorge all funds to each
5 employee acquired by means of any act or practice declared by this Court to be unlawful,
6 unfair, or fraudulent and, therefore, constituting unfair competition under Business and
7 Professions Code §§ 17200, *et seq.*;

8 11. For pre-judgment interest;

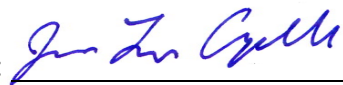
9 12. For civil penalties;

10 13. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted
11 by law, including, but not limited to, Code of Civil Procedure § 1021.5, Labor Code §§ 226(e),
12 2802(c), and 2698 *et seq.*; and

13 14. For such other relief as the Court deems just and proper.

14
15 Dated: July 29, 2020

AEGIS LAW FIRM, PC

16
17 By: 
18 Jessica L. Campbell
19 Attorneys for Plaintiff Edgar Penate
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