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behalf of himself and all others similarly situated
7

ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco
07/15/2020
Clerk of the Court
BY: JUDITH NUNEZ
Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN FRANCISCO**

11 JEFFREY LEWIS, an individual, on behalf
of himself and others similarly situated,

12 Plaintiff,

13 vs.

14 JPI SERVICES, INC., a California
15 corporation; JET PRO, INC., a California
Corporation; and DOES 1 through 50,
16 inclusive,

17 Defendants.
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Case No.: CGC-20-584347

CLASS ACTION

Assigned for All Purposes To:

Hon. Garrett L. Wong
Dept.: 610

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

1. Failure to Pay Minimum Wages and for all Hours Worked;
2. Failure to Pay Wages and Overtime under Labor Code § 510;
3. Meal Period Liability Under Labor Code § 226.7;
4. Rest-Break Liability Under Labor Code § 226.7;
5. Violation of Labor Code § 226(a)
6. Violation of Labor Code § 221;
7. Violation of Labor Code § 204;
8. Violation of Labor Code § 203;
9. Failure to Reimburse Necessary Business Expenses under Labor Code § 2802;
10. Failure to Maintain Temperatures Under the Wage Order;
11. Violation of Business & Professions Code § 17200 *et seq.*; and
12. Penalties under PAGA, Labor Code § 2698

DEMAND FOR JURY TRIAL

Original Complaint filed: May 5, 2020

1 Plaintiff JEFFREY LEWIS (hereinafter “Plaintiff”), on behalf of himself and all other
2 similarly situated non-exempt, hourly non-exempt employees employed at Defendants’ facilities
3 in California (collectively, “Employees”; individually, “Employee”) complains of Defendants, and
4 each of them, as follows:

5 **INTRODUCTION**

6 1. Plaintiff bring this action on behalf of himself and all other similarly situated
7 current and former Employees within the State of California who, at any time from four (4) years
8 prior to the filing of this lawsuit, are or were employed as non-exempt hourly employees,
9 including warehouse workers and drivers and Employees in similar and related positions based out
10 facilities operated in California by Defendants JPI SERVICES, INC., a California corporation;
11 JET PRO, INC., a California corporation; and DOES 1 through 50, inclusive (all defendants being
12 collectively referred to as “Defendants”). Plaintiff alleges that Defendants, and each of them,
13 violated various provisions of the California Labor Code, relevant orders of the Industrial Welfare
14 Commission (“IWC”), and the California Business & Professions Code, and seeks redress for
15 these violations.

16 2. Plaintiff was assigned to work by Defendants during the relevant time period based
17 out of Defendant’s facilities in Los Angeles County. Plaintiff worked as a warehouse worker and
18 driver along with other non-exempt hourly employees in similar and related positions at
19 Defendant’s California facilities, including in Los Angeles County and San Francisco County.
20 Defendants receive and ship fresh produce from warehouse facilities, through nearby airports, to
21 customers throughout California, Hawaii and elsewhere, and the facilities are maintained at near
22 freezing temperatures to keep produce fresh.

23 3. Plaintiff and the other similarly situated Employees of Defendants worked based
24 out of Defendants’ facilities and offices in California at Defendants’ behest without being paid all
25 wages due and without being provided all their required meal periods and rest breaks. Upon
26 information and belief, Plaintiff was employed by Defendants and (1) shared similar job duties
27 and responsibilities; (2) was subjected to the same policies and practices; and (3) endured similar
28 violations at the hands of Defendants as the other Employee Class members who served in similar

1 and related positions. Defendants required Plaintiff and the Employees in the Class to work off the
2 clock and failed to record accurate time worked by these Employees, failed to pay them at the
3 appropriate rates for all hours worked, failed to pay all wages due and owing at termination or
4 resignation, and provided Plaintiff and the Class members with inaccurate wage statements that
5 prevented them from learning of these unlawful pay practices. Defendants also failed to provide
6 Plaintiff and the Class with lawful meal and rest periods, as Employees were required to remain
7 under Defendants' control and were not provided with the opportunity to take full uninterrupted
8 and duty-free rest periods and meal breaks, as required by the Labor Code and the applicable
9 paragraphs of the IWC Wage Orders.

10 4. Defendant JPI SERVICES, INC. is a California corporation which is headquartered
11 and maintains its principal executive offices in South San Francisco, California. JPI SERVICES,
12 INC. is the presumptive employer of Plaintiff as it was listed as his employer on the wage
13 statements issued to him by Defendants. Upon information and belief, JPI SERVICES, INC. is a
14 related entity to named Defendant JET PRO, INC., which is a California corporation that also is
15 headquartered at the same South San Francisco address as JPI SERVICES, INC. JET PRO, INC.
16 describes its type of business "Air freight forwarder with a concentration on shipping produce,"
17 and its web-site explains that it designs Air Freight programs for discriminating customers who
18 demand Cold Chain protection and Food Safety... while utilizing high-performance insulation
19 materials along with icing technology" which maintains "necessary chill for perishable foods
20 being shipped by ground and air." Upon information and belief, Defendants JPI SERVICES, INC.
21 and JET PRO, INC. jointly employed Plaintiff and the similarly situated Class members based out
22 of facilities in San Francisco and Los Angeles Counties, where produce products were processed
23 and packaged at nearby warehouse locations and transported to Los Angeles and San Francisco
24 and Oakland airport shipping facilities. The Class members include Plaintiff and other non-
25 exempt, hourly employees Defendants employed based out of these warehouse facilities, including
26 warehouse workers (also referred to as "lumpers") and drivers, and those in similar and related
27 positions.

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1 5. This Court has jurisdiction over this Action pursuant to California Code of Civil
2 Procedure § 410.10 and California Business & Professions Code § 17203. This Action is brought
3 as a Class Action on behalf of similarly situated Employees of Defendants pursuant to California
4 Code of Civil Procedure § 382. Venue as to Defendants is also proper in this judicial district
5 pursuant to California Code of Civil Procedure § 395 *et seq.* Upon information and belief, the
6 obligations and liabilities giving rise to this lawsuit occurred, at least in part in San Francisco
7 County, and Defendants operate facilities and offices in California and are headquartered in San
8 Francisco, California, where many of the Class members have also been employed.

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

17 7. Plaintiff are informed and believes and thereon alleges that each Defendant acted in
18 all respects pertinent to this action as the agent of the other Defendants, that Defendants carried
19 out a joint scheme, business plan, or policy in all respects pertinent hereto, and that the acts of
20 each Defendant are legally attributable to the other Defendants. Furthermore, Defendants acted in
21 all respects as the employers or joint employers of Employees. Defendants, and each of them,
22 exercised control over the wages, hours or working conditions of Employees, created and
23 implemented the policies and practices that governed the employment of Plaintiff and the Class
24 members and dictated their job duties and responsibilities, or otherwise suffered or permitted
25 Plaintiff and the other Employee Class members to work, or engaged, thereby creating a common
26 law employment relationship, with the Employee Class members. Therefore, Defendants, and each
27 of them, employed or jointly employed the Employee Class members.

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FACTUAL BACKGROUND

8. The Employees who comprise the Class, including Plaintiff, are non-exempt employees of Defendants pursuant to the applicable Wage Order of the Industrial Welfare Commission (“IWC”). During the period of four years prior to the filing of this action through its resolution, Plaintiff and the Class members were either not paid by Defendants for all hours worked or were not paid at the appropriate minimum, regular and overtime rates. Plaintiff also contends that Defendants failed to pay Plaintiff and the Class members all wages due and owing, including by requiring off the clock work and through unlawful rounding and failing to pay overtime, failed to provide meal and rest breaks, and failed to furnish accurate wage statements and timely pay all wages owed, all in violation of various provisions of the California Labor Code and applicable paragraphs of the IWC Wage Orders.

9. During the course of Plaintiff and the Class members’ employment with Defendants, they were not paid all wages they were owed, including for all work performed (resulting in “off the clock” work) and for all their overtime hours worked. This has resulted in systematic and ongoing violations of the California Labor Code and relevant IWC Wage Orders. Upon information and belief, Defendants employ and have employed other non-exempt, hourly employees at their facilities in California.

10. Defendants ship fresh produce from their Los Angeles and San Francisco warehouse facilities, through nearby airports, to customers throughout California, Hawaii and elsewhere, and the facilities are maintained at near freezing temperatures to keep produce fresh. Plaintiff worked as both a warehouse worker and driver for Defendants during the relevant time period, and Defendants maintained continuous operations by scheduling three shifts. The warehouse workers are responsible for performing all duties attendant to receiving produce and processing and packaging it on specialized pallets for air freight shipments referred to as PMC’s. The pallets had to be stacked to the appropriate dimensions and wrapped in cargo netting and packaged and covered with thermo-insulation for air shipment in conformance with TSA guidelines. The PCMs are loaded onto trailers and trucks and transported to the nearby airport terminals and delivered to the appropriate terminal facilities by the drivers.

1 11. Plaintiff and the class members were generally scheduled to work at least five days
2 per week, and upon information and belief were paid bi-weekly for shifts scheduled for at least
3 eight hours, and Plaintiff often worked shifts of ten hours or longer. As the facilities were
4 scheduled for continuous operations, there was often overlap between the shifts as Class members
5 from the incoming shift conducted shift transfers with the outgoing shifts, and Employees were
6 required to ensure their areas were cleaned at the end of shifts. As a result, Plaintiff and the Class
7 members often performed off the clock work or otherwise worked hours for which they were not
8 compensated at the beginning and ending of their shifts, including due to the requirements for
9 shift transitions.

10 12. Defendants utilized timekeeping systems and procedures which resulted in
11 inaccurate or incomplete records of clock in and out times for work shifts and meal periods,
12 including by rounding hours down to the detriment of the employees in the Class. Plaintiff and
13 the Class members were required to record time entries by a thumb print scanner, which was
14 unreliable and gave rise to many issues with timekeeping records. The unreliability of the entries
15 resulted in managers often having to make manual adjustments to time records or to otherwise
16 provide credit for scheduled hours worked rather than actual hours. This resulted in wide-spread
17 off the clock work where Employees in the Class were not compensated at their required rates for
18 all hours worked, including time when they remained under Defendants' control.

19 13. The violations were exacerbated by the inability of Employees to review and make
20 required revisions to their timekeeping entries before Defendants provided payroll data to its PEO
21 for the pay periods. As a result of the many errors with time entries or the lack of availability of
22 the fingerprint scanners and corresponding inaccurate and unlawfully rounded entries by
23 managers, Defendants systematically and uniformly failed to pay Plaintiff and the Class members
24 wages as required for all their hours worked and unlawfully deducted wages they earned. For
25 example, upon information and belief, Plaintiff's supervisor got so upset with all the time entry
26 changes he was asked to make for missed or incorrect time punches that he started docking
27 employees an hour of pay whenever he thought an employee missed a time punch. In such
28 instances, Plaintiff and the Class members had their wages unlawfully deducted when

1 Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact
2 worked.

3 14. This led to systematic off the clock work where Employees were working or
4 otherwise under Defendants' control before shift start times, and after shift end times, but they
5 were not compensated by Defendant for all their time, including due to unlawful rounding. If they
6 inputted time to the minute reflecting all this off the clock work or else missed any time punches,
7 they would be reprimanded and managers would edit entries to reflect fewer hours worked.
8 There were many issues with the timekeeping system, as Plaintiff noted that his timekeeping
9 entries would not appear after they were inputted, and that Defendants' managers would later edit
10 them as necessary to reflect scheduled times or to otherwise avoid having to pay Plaintiff and the
11 Class members for all hours worked or to avoid paying them at the required overtime rate. This
12 unpaid off the clock work, including that incurred before shift start times, also impacted when
13 employees should have been paid at the applicable hourly overtime rate, as they began incurring
14 overtime later than they should have during a work shift. This led to systematic underpayment of
15 both regular and overtime wages.

16 15. Plaintiff was paid bi-weekly, but often waited seven days or longer after the close
17 of the pay period to receive his paychecks. Defendants and their PEO (TriNet) would issue
18 Employees paychecks and wage statements listing a check date of six or seven days after the
19 close of the corresponding bi-weekly pay period. By the time Defendants' management received
20 and then provided these to Plaintiff and the class members at a point in time, it was often after
21 seven days from the close of the prior pay period. In some instances, Defendants even forgot to
22 issue a check and wage statement to Plaintiff and he did not receive payment until a week or two
23 after the close of the preceding pay period.

24 16. Given the above described off the clock work and unlawful rounding and
25 deductions from hours worked perpetrated by Defendants' management, Plaintiff would often
26 notice on his wage statements that he was being paid for substantially fewer hours than he
27 actually worked, and that he was not paid at the correct overtime rate for all hours he worked
28 after eight hours into a shift or over forty in a work week. Plaintiff was not provided the

1 opportunity to see that any changes had been made before pay checks were issued, despite being
2 repeatedly underpaid for all his hours worked. Defendants' conduct is in violation of the
3 requirement to timely pay all wages, including under Labor Code § 204. Upon information and
4 belief, the same occurred in connection with the other Class members.

5 17. Defendants also relied heavily on sending text messages to and calling Plaintiff
6 and the Class members regarding daily scheduling issues and regarding other work related
7 matters, and did so without regard to whether they were off duty or otherwise on a break. This
8 resulted in further off the clock work where Plaintiff and the Class members were under
9 Defendant's control and performing work duties without compensation. This time was not
10 compensated as hours worked by Defendants, and Defendants failed to reimburse Plaintiff and
11 the Class members for the substantial use of their personal phones and data plans for work-related
12 purposes.

13 18. Plaintiff was therefore not paid for all his hours worked at the required minimum,
14 overtime and double time wage rates due to Defendants' policy of unlawful rounding and practice
15 of requiring him to work off the clock and without pay, and failed to pay at the required overtime
16 rates for all hours over eight in a shift, or over forty in a week. With work shifts generally being
17 scheduled for eight hours or more, this unpaid off the clock work resulted in Plaintiff and the
18 Class members working past eight hours on a shift, which required that they be paid at the correct
19 overtime rate of 1.5 times their regular rate. Defendants' management would shave hours worked
20 off of Plaintiff's daily and weekly totals, or otherwise round them down or fail to record them. To
21 the extent Defendants paid Class members any shift differentials or other forms of remuneration,
22 Defendants failed to include them in the regular rate used to calculate and pay overtime hours.

23 19. Defendants thus systematically underpaid Plaintiff and the Class members by
24 failing to pay them at the required overtime rates for all hours over eight in a work shift or over
25 forty in a work week, and all hours over twelve in a day at the required double time rate. Upon
26 information and belief, the Class members were bound by similar scheduling and work policies
27 which Defendants required them to follow, and endured similar violations at Defendants' hands
28 as Plaintiff.

1 20. Defendants have either failed to maintain timekeeping records for Plaintiff that
2 would permit Plaintiff to discover the nature and extent of the off the clock work Defendants'
3 required and the actual hours Plaintiff worked, or have otherwise declined to produce them to
4 Plaintiff in response to a timely and lawful request. By failing to pay for all hours worked, and by
5 deducting time for meal periods that were not lawfully provided, Defendants have committed
6 knowing and intentional ongoing violations of the record keeping requirements under the Labor
7 Code, including section 1174.

8 21. The failure to pay for all hours worked and underpayment of wages to Plaintiff
9 and the Class members is and has been a direct consequence of Defendants' unlawful
10 compensation policies and practices, which applied uniformly to the Class members working at
11 Defendants' locations throughout California. As a result of the above described unlawful
12 requirements to work off the clock, the failure to accurately record all hours worked and pay
13 wages at the correct rates, and the other wage violations they endured at Defendants' hands,
14 Plaintiff and the Class members were not properly paid all wages earned and all wages owed to
15 them by Defendants, including when working more than eight hours in any given day and/or
16 more than forty hours in any given week. As a result of Defendants' unlawful policies and
17 practices, Plaintiff and Class members incurred overtime hours worked for which they were not
18 adequately and completely compensated, in addition to the hours they were required to work off
19 the clock at their regular rates.

20 22. Therefore, from at least four years prior to the filing of this lawsuit and continuing
21 to the present, Defendants had a consistent policy or practice of failing to pay Employees for all
22 hours worked, and failing to pay minimum wages for all time worked, as required by California
23 law. Also, from at least four years prior to the filing of this lawsuit and continuing to the present,
24 Defendants had a consistent policy or practice of failing to pay Employees overtime compensation
25 at premium overtime rates for all hours worked in excess of eight hours a day and/or forty hours a
26 week, and double-time rates for all hours worked in excess of twelve hours a day, in violation of
27 Labor Code § 510 and the corresponding sections of IWC Wage Orders.

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1 23. Defendants also failed to provide Plaintiff and the Class members with their
2 required first and second meal periods, and their first, second, and third required rest breaks. The
3 above described off the clock work contributed to Defendants' common policy of failing to
4 provide lawful meal periods to Plaintiff and the Class members, as required under the Labor Code
5 and Paragraph 11 of the IWC Wage Order(s). Defendants similarly systematically failed to
6 authorize and permit Plaintiff and the Class members to take all required 10-minute rest breaks,
7 as required under the Labor Code and Paragraph 12 of the IWC Wage Order(s).

8 24. Defendants did not generally schedule meal periods and rest breaks, and
9 employees were expected to take them if and when they were able to based on their work
10 requirements. As a result, if and when Plaintiff and the Class members were able to take breaks,
11 they were untimely or were impermissibly shortened or otherwise interrupted by work demands.
12 Defendants did not generally schedule meal periods or rest breaks, and Plaintiff and the Class
13 members were left to their own devices to go to a break if and when their workload permitted it.
14 There were no allowances made by Defendant to provide Plaintiff breaks when he was driving to
15 and from the airports, and Plaintiff's job demands required him to hurry through loading,
16 delivering, and unloading his deliveries and returning to the warehouse without regard to taking
17 breaks. Plaintiff would therefore often work through his shifts without taking meal breaks, and if
18 and when he was able to take them, it was well-past five hours into the shift. On shifts of over ten
19 hours, Defendants also failed to provide second meal periods. Due to the work scheduling and job
20 demands Defendants placed upon Plaintiff and the Class members, and the systematic
21 understaffing Employees had to contend with, Plaintiff and the Class members were pressured to
22 work through breaks and therefore endured similar ongoing meal period and rest break violations
23 at Defendants' hands.

24 25. Plaintiff and the Class members generally worked shifts that entitled them to
25 receive at least one meal period and two to three rest breaks. However, Defendants failed to
26 provide all required meal periods and rest breaks to Plaintiff and the Class members. Defendants
27 followed a uniformly applied policies across all facilities of not providing all required meal
28 periods and rest breaks to their Employees in accordance with the Labor Code and IWC Wage

1 Orders. Meal periods were often not provided during a work shift, as work and production
2 demands and management pressure required Employees to work through breaks. When breaks
3 were provided, they were frequently provided well after five hours into a work shift, and often for
4 less than 30 minutes. Plaintiff was also required to endure shifts of ten hours or more without
5 receiving a second meal period or all his required rest breaks.

6 26. Defendants also followed a policy of denying all required timely and duty-free
7 meal periods for 30 minutes in duration by automatically deducting for meal periods which were
8 presumed to have been properly provided while also systematically shortening breaks by
9 requiring Employees to remain under Defendants' control. Defendants thus failed to provide all
10 the legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
11 periods to Plaintiff and the other Class members, as required by the applicable Wage Order and
12 Labor Code. Defendants did not have a policy or practice which provided or recorded all the
13 legally required unpaid, off-duty meal periods and all the legally required paid, off-duty rest
14 periods to the Plaintiff and the other Class members. Plaintiff and other Class members were
15 required to perform work as ordered by Defendants or otherwise remain under Defendants'
16 control for more than five hours during a shift, or ten hours in a shift, but were often required to
17 do so without receiving a lawful, timely, and duty-free 30-minute meal break for every five hours
18 worked. Additionally, as addressed above, Defendants followed a practice of requiring off the
19 clock work, in a manner that would impact when Employees were to receive meal periods and
20 rest breaks, thus leading to further violations.

21 27. As a result, Defendants' failure to provide Plaintiff and the Class members with all
22 legally required off-duty, unpaid meal periods and all the legally required off-duty, paid rest
23 periods is and will be evidenced by Defendants' business records, or lack thereof. Defendants have
24 either failed to maintain required records of when meal periods were actually provided or failed to
25 produce them in response to Plaintiff' timely and lawful requests, or else maintained inaccurate
26 and incomplete records. Defendants also failed to pay Employees "premium pay," i.e. one hour of
27 wages at each Employee's effective hourly rate of pay, for each meal period or rest break that
28 Defendants failed to provide or deficiently provided.

1 28. Therefore, for at least four years prior to the filing of this action and through to the
2 present, Plaintiff and the Class members were unable to take off-duty breaks or were otherwise not
3 provided with the opportunity to take required meal breaks due to Defendants' policies and
4 practices. On the occasions when Plaintiff and the Class members were provided with a meal
5 period, it was often provided after five hours into a work shift and was therefore untimely or was
6 interrupted, or was impermissibly shortened, and Employees were not provided with one hour's
7 wages in lieu thereof. To the extent Defendants assert they paid any meal period premiums, they
8 failed to do so for all violations. Meal period violations thus occurred in one or more of the
9 following manners:

- 10 (a) Class members were not provided full thirty-minute duty free meal periods
11 for work days in excess of five hours and were not compensated one hour's
12 wages in lieu thereof, all in violation of, among others, Labor Code §§
13 226.7, 512, and the applicable Industrial Welfare Commission Wage
14 Order(s);
- 15 (b) Class members were not provided second full thirty-minute duty free meal
16 periods for work days in excess of ten hours;
- 17 (c) Class members were required to work through at least part of their daily
18 meal period(s);
- 19 (d) Meal periods were provided after five hours of continuous work during a
20 shift; and
- 21 (e) Class members were restricted in their ability to take a full thirty-minute
22 meal period or were otherwise required to remain under Defendants'
23 control during meal periods.

24 29. Defendants also failed to authorize and permit Plaintiff and the Class members to
25 take duty-free, net ten minute rest breaks for ever four hours of shift work, or major fraction
26 thereof. Defendants also failed to authorize and permit Plaintiff and the Class members to take
27 their required duty-free, net ten minute rest periods. Rest breaks were not scheduled, as
28 Defendants' policy was not to provide them, and management did not emphasize the requirement

1 to provide at least one ten minute duty-free rest period for each four hour duty period, or major
2 fraction thereof. Thus, on shift of ten hours or more, Defendants were required to provide at least
3 three duty-free ten minute rest breaks to Plaintiff and the Class members. Defendants neglected to
4 do so, and even if Employees were provided with one rest break during a scheduled shift, they
5 were not provided with the required second or third rest breaks.

6 30. Defendants did not schedule any required ten minute rest breaks, and Plaintiff and
7 the Class members were compelled by work requirements and scheduling demands to continue
8 working throughout their shifts without receiving their required first, second, and third rest
9 breaks. On the rest breaks there were authorized and permitted to take, they were often
10 interrupted regarding work matters.

11 31. Therefore, the job requirements and duties required of Plaintiff and the Class
12 members, and the demands from management and customers, manifested a failure to authorize
13 and permit Class members to take all their required rest breaks. Plaintiff and the other similarly
14 situated Class members were either not authorized permitted the opportunity to take a rest break,
15 or were required to remain under Defendants' control and respond to instructions from
16 management and job and customer demands. Defendants also failed to authorize and permit
17 employees to leave the premises during rest breaks, or else prevented them from doing so, thus
18 further evidencing Defendants' policy and practice of requiring Plaintiff and the Class members
19 to remain under their control during required off-duty rest breaks.

20 32. Defendants' policies and practices thus systematically deny and denied Plaintiff
21 and the Class members full, duty-free ten-minute rest periods and thirty-minute, duty-free meal
22 periods. The California Supreme Court has instructed that the rest period requirement obligates
23 employers to permit-and authorizes employees to take-off-duty rest periods. That is, during rest
24 periods employers must relieve employees of all duties and relinquish control over how
25 employees spend their time. Plaintiff and the Class members were and are under Defendants'
26 control when they are working through rest breaks, and Defendants failed to schedule or account
27 for required first, second, and third rest breaks during the shifts Plaintiff and the Class members
28 generally worked.

1 33. Plaintiff and the Defendants' Employees in the Class were therefore not authorized
2 and permitted to take lawful rest periods, were systematically required by Defendants to work
3 through or during breaks, and were not provided with one (1) hour's wages in lieu thereof. They
4 were required to remain on-duty during breaks or portions of their breaks, thus making them
5 either untimely or shortened and on-duty, and they were also prevented from leaving the premises
6 during rest breaks under Defendants' policies and practices. Rest period violations therefore arose
7 in one or more of the following manners:

- 8 (a) Class members were required to work without being provided a minimum
9 ten (10) minute rest period for every four (4) hours or major fraction
10 thereof worked and were not compensated one (1) hour of pay at their
11 regular rate of compensation for each workday that a rest period was not
12 provided;
- 13 (b) Class members were not authorized and permitted to take timely rest
14 periods for every four hours worked, or major fraction thereof; and
- 15 (c) Class members were required to remain on-duty and under Defendants'
16 control during rest periods or otherwise had their rest periods interrupted
17 by work demands.

18 34. From at least four (4) years prior to the filing of this lawsuit and continuing to the
19 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
20 deducting the Employees' earned wages, including by the above described off the clock before
21 and after work shifts and automatically deducting 30 minutes of work for unpaid meal periods
22 Defendants failed to provide. As detailed above, Plaintiff's supervisor also got so upset with all
23 the time entry changes he was asked to make for missed or incorrect time punches that he started
24 docking employees an hour of pay whenever he thought an employee missed a time punch. In
25 such instances, Plaintiff and the Class members had their wages unlawfully deducted when
26 Defendants' managers recorded fewer hours worked in the timekeeping records than were in fact
27 worked. By not compensating Employees for all hours worked, and the automatic deductions for
28 unprovided meal periods and failure to pay for hours spent under Defendants' control, Defendants

1 unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of
2 Labor Code § 221.

3 35. As a result of the above described illegal policies and practices, Defendants
4 engaged in and enforced the following additional unlawful practices and policies against Plaintiff
5 and the Class members he seeks to represent:

- 6 a. failing to pay all wages owed to Class members who either were discharged, laid
7 off, or resigned in accordance with the requirements of Labor Code §§ 201, 202,
8 203;
- 9 b. failing to pay all wages owed to the Class members twice monthly in accordance
10 with the requirements of Labor Code § 204;
- 11 c. failing to pay Class members all wages owed, including all meal and rest period
12 premium wages;
- 13 d. failing to maintain accurate records of Class members' earned wages and meal
14 periods in violation of Labor Code §§ 226 and 1174(d) and section 7 of the
15 applicable IWC Wage Orders; and
- 16 e. failing to produce timekeeping records in response to Plaintiff' timely and lawful
17 request to receive them under these authorities.

18 36. From at least four (4) years prior to the filing of this lawsuit, and continuing to the
19 present, Defendants have also consistently failed to provide Employees with timely, accurate, and
20 itemized wage statements, in writing, as required by California wage-and-hour laws, including by
21 the above-described requirement of off the clock work, failure to pay all overtime, and failure to
22 pay premium wages for unprovided or otherwise unlawful meal and rest breaks. Defendants have
23 also made it difficult to account with precision for the unlawfully withheld wages and meal and
24 rest period compensation owed to Plaintiff and the Class, during the liability period, because they
25 did not implement and preserve a record-keeping method as required for non-exempt employees
26 by California Labor Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage
27 Orders. Upon information and belief, time clock punches were not maintained or were not
28 accurately maintained for work shifts and meal periods, which were automatically presumed by

1 Defendants to have been lawfully provided when they were not. Defendants also failed to
2 accurately record and pay for all regular and overtime hours worked by Plaintiff and the Class
3 members.

4 37. Defendants also provided Plaintiff and the Class members with wage statements
5 that failed to accurately report all hours worked and applicable hourly rates for all hours worked.
6 Plaintiff and the Employees in the Class were unable to discern from their wage statements alone
7 the actual hours they worked in total during a pay period.

8 38. Defendants have thus also failed to comply with Labor Code § 226(a) by issuing
9 wage statements that inaccurately reported total hours worked and total wages earned by Plaintiff
10 and the Class members, along with the appropriate applicable rates, among others requirements.
11 Plaintiff and Class members are therefore entitled to penalties not to exceed \$4,000.00 for each
12 employee pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph
13 7 of the applicable California IWC Wage Orders by failing to maintain time records showing
14 when the employee begins and ends each work period, meal periods, wages earned pursuant to
15 Labor Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions
16 from payment of wages and accurately reporting total hours worked by the Class members.

17 39. Defendants also required Plaintiff and the Class members to work hours off the
18 clock for which they were not compensated, including during interrupted or otherwise on-duty
19 meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work
20 conducted on a work shift and a workday, as addressed above. Therefore, when they received
21 wage statements and pay checks, they did not compensate all hours worked on a timely basis,
22 resulting in Defendants' systematic failure to pay all wages owed to Plaintiff and the Class
23 members twice monthly in accordance with the requirements of Labor Code § 204.

24 40. Also, Plaintiff, and upon information and belief the other Class members, were paid
25 bi-weekly, but often waited seven days or longer after the close of the pay period to receive
26 paychecks. Defendants and their PEO (TriNet) would issue Employees paychecks and wage
27 statements listing a check date of six or seven days after the close of the corresponding bi-weekly
28 pay period. By the time Defendants' management received and then provided these to Plaintiff and

1 the class members at a point in time, it was often after seven days from the close of the prior pay
2 period. In some instances, Defendants even forgot to issue a check and wage statement to Plaintiff
3 and he did not receive payment until a week or two after the close of the preceding pay period.
4 Given the above described off the clock work and unlawful rounding and deductions from hours
5 worked perpetrated by Defendants' management, Plaintiff would often notice on his wage
6 statements that he was being paid for substantially fewer hours than he actually worked, and that
7 he was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or
8 over forty in a work week. Defendants' uniformly applied payroll policies and practices thus
9 resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

10 41. Also, from at least four years prior to filing this lawsuit and continuing to the
11 present, Defendants have also followed a uniform and consistent policy of failing to pay all wages
12 owed to Plaintiff and other similarly situated Employees at the time of their termination or within
13 seventy-two (72) hours of their resignation, as required by California wage-and-hour laws.
14 Defendants' failure to pay wages for all hours worked and failure to pay premiums for overtime
15 and meal periods further evidenced their failure to pay all wages owed to Plaintiff and the Class
16 members at the time they were terminated or otherwise separated from employment.

17 42. California Labor Code § 1198 requires that "... the standard conditions of labor
18 fixed by the commission shall be the ... standard conditions of labor for employees. The
19 employment of any employee ... under conditions of labor prohibited by the order is unlawful."
20 Paragraph 15 of the applicable IWC Wage Orders requires the following regarding the
21 temperatures maintained at employers' facilities within California: "(A) The temperature
22 maintained in each work area shall provide reasonable comfort consistent with industry-wide
23 standards for the nature of the process and the work performed..." Given the requirements to
24 maintain fresh produce at near freezing temperatures, Plaintiff and the Class members worked in a
25 warehouse environment that was too cold for the Class members to work comfortably. However,
26 Defendant took no steps to provide cold weather gear or provide required warming rooms and
27 equipment to allow Class members to work in a comfortable work environment.

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1 43. Plaintiff was therefore required to incur costs of cold-weather gear so that he could
2 work in the frigid warehouse facilities that were kept so cold that ice formed on the condensers.
3 Plaintiff was also required to purchase special warm gloves after his fingers turned blue and so
4 that he could handle dry ice, and had to purchase his own parka. Defendants failed to provide such
5 necessary cold-weather gear to Plaintiff and the Class members despite requiring them to work in
6 freezing conditions, and Defendants systematically and uniformly failed to reimburse such
7 expenses to Plaintiff and the Class members.

8 44. Therefore, from at least four years prior to the filing of this lawsuit and continuing
9 to the present, Defendants have regularly required Plaintiff and the Class members to incur
10 necessary business expenses in the course of performing their required job duties. This includes
11 the cold weather gear and special gloves that Plaintiff and the Class members were required to
12 purchase without reimbursement. Defendants also required Plaintiff and the Class members to use
13 their cellular phones to conduct work related business and to receive scheduling and location
14 assignments. Plaintiff was required to use his cell phone frequently as a primary means of
15 communication with Defendant regarding work scheduling or to discuss the status of work
16 requirements and his deliveries. Defendants would contact Plaintiff without regard to whether he
17 was off-duty after scheduled work hours, and without regard to whether he was taking a break.
18 Plaintiff estimates that at least 25% of the calls and text messages he received regarding work
19 duties and requirements, and he also used his personal cellular phone for internet research and
20 maps as required in connection with his work assignments. Defendants failed to reimburse
21 Plaintiff and the Class members for any of their expenses related to their personal cellular phones
22 and data usage, or for the cold-weather gear they had to purchase to work in the frigid facilities, in
23 violation of Labor Code § 2802.

24 45. In light of the foregoing, Plaintiff and the Employees in the Class bring this action
25 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 510,
26 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 1198, 1199, 2802, and 2698 *et seq.*, and California
27 Code of Regulations, Title 8, section 11000 *et seq.*

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46. Furthermore, pursuant to Business and Professions Code §§ 17200-17208, Plaintiff and the Class members seek injunctive relief, restitution, and disgorgement of all benefits Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or fraudulent practices alleged in this Complaint.

CLASS ALLEGATIONS

47. Plaintiff brings this class action on behalf of himself and all others similarly situated pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class (or “the Class” or “Class members”) defined as follows: “All individuals employed by Defendants at any time during the period of four (4) years prior to the filing of this lawsuit and ending on a date as determined by the Court (“the Class Period”), and who have been employed as non-exempt, hourly employees, including warehouse workers and drivers and those in similar and related positions, based out of Defendants’ facilities and offices within the State of California.” Further, Plaintiff seeks to represent the Subclasses composed of and defined as follows:

a. Subclass 1. Minimum Wages Subclass. All Class members who were not compensated for all hours worked for Defendants at the applicable minimum wage.

b. Subclass 2. Wages and Overtime Subclass. All Class members who were not compensated for all hours worked for Defendants at the required rates of pay, including for all hours worked in excess of eight in a day and/or forty in a week.

c. Subclass 3. Meal Period Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-free meal periods or one hour of pay at the Employee’s regular rate of pay in lieu thereof.

d. Subclass 4. Rest Break Subclass. All Class members who were subject to Defendants’ policy and/or practice of failing to authorize and permit Employees to take uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction thereof, and failing to pay one hour of pay at the Employee’s regular rate of pay in lieu thereof.

e. Subclass 5. Wage Statement Subclass. All Class members who, within the applicable limitations period, were not provided with accurate itemized wage statements.

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1 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
2 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
3 including by requiring off the clock work.

4 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
5 members who were subject to Defendants' policy and practice of not timely paying all wages
6 earned when they were due and payable at least twice monthly.

7 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
8 applicable limitations period, either voluntarily or involuntarily separated from their employment
9 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
10 termination.

11 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
12 necessary and reasonable expenses in connection with performing their job duties for Defendants
13 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

14 j. Subclass 9. Failure to Maintain Reasonable Temperature Subclass: All Class
15 members who, within the applicable limitations period, were required by Defendants to work in
16 areas with temperatures that were not maintained to provide reasonable comfort consistent with
17 applicable standards.

18 k. Subclass 10. UCL Subclass. All Class members who are owed restitution as a
19 result of Defendants' business acts and practices, to the extent such acts and practices are found to
20 be unlawful, deceptive, and/or unfair.

21 48. Plaintiff reserves the right under California Rule of Court 3.765 to amend or
22 modify the class description with greater particularity or to provide further division into subclasses
23 or limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
24 against Defendants, the Class Period should be adjusted accordingly.

25 49. Defendants, as a matter of company policy, practice and procedure, and in violation
26 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
27 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
28 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time

1 worked by Plaintiff and the other members of the Class, even though Defendants enjoyed the
2 benefit of this work, required Employees to perform this work and permitted or suffered to permit
3 this work. Defendants have uniformly denied these Class members wages to which these
4 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
5 order to unfairly cheat the competition and unlawfully profit.

6 50. This action has been brought and may properly be maintained as a class action
7 under the provisions of Code of Civil Procedure § 382 because there is a well-defined community
8 of interest in this litigation and the proposed Class is easily ascertainable from the employment
9 records for Plaintiff and the Class members that Defendants are required to maintain under
10 California law.

11 **A. Numerosity**

12 51. The potential members of the Class as defined are so numerous that joinder of all
13 the Class members is impracticable. While the precise number of Class member has not been
14 determined at this time, Plaintiff are informed and believes that Defendants employ or, during the
15 time period relevant to this lawsuit employed, at least 100 Employees who satisfy the Class
16 definition within the State of California. Plaintiff alleges that Defendants' employment records
17 will provide information as to the number and location of all Class members.

18 **B. Commonality**

19 52. There are questions of law and fact common to the Class that predominate over any
20 questions affecting only individual Class members. The common questions are numerous and
21 substantial and flow from Defendants' uniform policies and/or practices of violating the California
22 Labor Code addressed above. As such, these common questions predominate over individual
23 questions concerning each individual Class Member's showing as to his or her eligibility for
24 recovery or as to the amount of damages. These common questions of law and fact include:

- 25 a. Whether Defendants failed to pay Employees minimum wages;
- 26 b. Whether Defendants failed to pay Employees wages for all hours worked;
- 27 c. Whether Defendants failed to pay Employees overtime as required under Labor
28 Code § 510;

- 1 d. Whether Defendants violated Labor Code §§ 226.7 and 512, and the applicable
2 IWC Wage Orders, by failing to provide Employees with requisite meal periods or
3 premium pay in lieu thereof;
- 4 e. Whether Defendants violated Labor Code §§ 226.7, and the applicable IWC Wage
5 Orders, by failing to authorize and permit Employees to take requisite rest breaks
6 or provide premium pay in lieu thereof;
- 7 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
8 inaccurate wage statements;
- 9 g. Whether Defendants violated Labor Code § 221;
- 10 h. Whether Defendants violated Labor Code §§ 201, 202, and 203 by failing to pay
11 wages and compensation due and owing at the time of termination of employment;
- 12 i. Whether Defendants' conduct was willful;
- 13 j. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
14 Orders by failing to maintain accurate records of Class members' earned wages and
15 work periods;
- 16 k. Whether Defendants violated Labor Code § 1194 by failing to compensate all
17 Employees during the relevant time period for all hours worked, whether regular or
18 overtime;
- 19 l. Whether Defendants violated Labor Code § 204 by failing to pay Employees all
20 wages earned at least twice monthly;
- 21 m. Whether Defendants violated Labor Code § 1198 and paragraph 15 of the
22 applicable IWC Wage Orders by failing to maintain work area temperatures at a
23 reasonable comfort level consistent with industry standards;
- 24 n. Whether Defendants violated Labor Code § 2802 by failing reimburse necessary
25 business expenses incurred by Employees;
- 26 o. Whether Defendants violated Business and Professions Code § 17200 *et seq.*; and
27 p. Whether Employees are entitled to equitable relief pursuant to Business and
28 Professions Code § 17200 *et seq.*

1 **C. Typicality**

2 53. The claims of the named Plaintiff are typical of those of the other Employees. The
3 Employee Class members all sustained injuries and damages arising out of and caused by
4 Defendants' common course of conduct and uniformly applied policies in violation of statutes, as
5 well as regulations, that have the force and effect of law, as alleged herein. Plaintiff's claims for
6 the off the clock work and meal and rest violations he was required to endure are typical of those
7 of the other Class members.

8 **D. Adequacy of Representation**

9 54. Plaintiff will fairly and adequately represent and protect the interest of the
10 Employee Class members. Counsel who represents Plaintiff and the Employees in the Class are
11 experienced and competent in litigating employment class actions.

12 **E. Superiority of Class Action**

13 55. A class action is superior to other available means for the fair and efficient
14 adjudication of this controversy. Individual joinder of all Employees is not practicable, and
15 questions of law and fact common to all Employees predominate over any questions affecting only
16 individual Employees. Each Employee in the Class has been damaged and is entitled to recovery
17 by reason of Defendants' illegal policies or practices of failing to compensate Employees properly.

18 56. As to the issues raised in this case, a class action is superior to all other methods for
19 the fair and efficient adjudication of this controversy, as joinder of all Class members is
20 impracticable and many legal and factual questions to be adjudicated apply uniformly to all Class
21 members. Further, as the economic or other loss suffered by vast numbers of Class members may
22 be relatively small, the expense and burden of individual actions makes it difficult for the Class
23 members to individually redress the wrongs they have suffered. Moreover, in the event
24 disgorgement is ordered, a class action is the only mechanism that will permit the employment of
25 a fluid fund recovery to ensure that equity is achieved. There will be relatively little difficulty in
26 managing this case as a class action, and proceeding on a class-wide basis will permit Employees
27 to vindicate their rights for violations they endured which they would otherwise be foreclosed
28 from receiving in a multiplicity of individual lawsuits that would be cost prohibitive to them.

1 57. Class action treatment will allow those persons similarly situated to litigate their
2 claims in the manner that is most efficient and economical for the parties and the judicial system.
3 Plaintiff is unaware of any difficulties in managing this case that should preclude class treatment.
4 Plaintiff contemplate the eventual issuance of notice to the proposed Class members that would set
5 forth the subject and nature of the instant action. The Defendants' own business records can be
6 utilized for assistance in the preparation and issuance of the contemplated notices. To the extent
7 that any further notice is required additional media and/or mailings can be used.

8 58. Defendants, as prospective and actual employers of the Employees in the Class,
9 had a special fiduciary duty to disclose to prospective Class members the true facts surrounding
10 Defendants' pay practices, policies and working conditions imposed upon the similarly situated
11 Employees as well as the effect of any alleged arbitration agreements that may have been forced
12 upon them. In addition, Defendants knew they possessed special knowledge about pay practices
13 and policies, most notably intentionally refusing to pay for all hours actually worked which should
14 have been recorded in Defendants' pay records and the consequence of the alleged arbitration
15 agreements and policies and practices on the Employees and Class as a whole.

16 59. Plaintiff and the Employees in the Class did not discover the fact that they were
17 entitled to all pay under the Labor Code until shortly before the filing of this lawsuit nor was there
18 any discussion about Plaintiff' and the Class' wavier of their Constitutional rights of trial by jury,
19 to collectively organize and oppose unlawful pay practices under California law as well as obtain
20 injunctive relief preventing such practices from continuing. As a result, the applicable statutes of
21 limitation tolled until such time as Plaintiff and the Class members discovered their claims.

22 **FIRST CAUSE OF ACTION**

23 **FAILURE TO PAY MINIMUM WAGES**

24 **(Against All Defendants)**

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

27 61. Defendants failed to pay Employees minimum wages they were owed, including
28 by their consistent policy of failing to pay Employees for all hours worked. Employees would

1 work hours and not receive wages, including as alleged above in connection with off the clock
2 work, including all the time required to remain on duty and under Defendants' control and during
3 breaks and due to the work demands placed upon them by Defendants' management. Defendants
4 also imposed difficult to attain job and shift scheduling requirements on Plaintiff and the Class
5 members, which resulted in off the clock work and underpayment of all wages owed to
6 Employees over a period of time, while benefiting Defendants. During the relevant time period,
7 Defendants thus regularly failed to pay minimum wages to Plaintiff and the Class members,
8 including by requiring systematic off the clock work and by unlawful rounding. Defendants'
9 uniform pattern of unlawful wage and hour practices manifested, without limitation, applicable to
10 the Class as a whole, as a result of implementing a uniform policy and practice that denied
11 accurate compensation to Plaintiff and the other members of the Class as to minimum wage pay.

12 62. In California, employees must be paid at least the then applicable state minimum
13 wage for all hours worked, including under Labor Code § 1197, IWC Wage Order MW-2014,
14 and paragraphs 2(K), 2(S), and 4(A)-4(C) of the applicable IWC Wage Orders. Paragraph 2(H)
15 of the applicable IWC Wage Orders defines "Hours Worked" as "the time during which an
16 employee is subject to the control of an employer, and includes all the time the employee is
17 suffered or permitted to work, whether or not required to do so." Additionally, pursuant to
18 California Labor Code § 204, other applicable laws and regulations, and public policy, an
19 employer must timely pay its employees for all hours worked. Defendants failed to do so.

20 63. California Labor Code § 1197, entitled "Pay of Less Than Minimum Wage"
21 states: "The minimum wage for employees fixed by the commission is the minimum wage to be
22 paid to employees, and the payment of a less wage than the minimum so fixed is unlawful."

23 64. The applicable minimum wage rate fixed by the commission for work during the
24 relevant period is found in the Wage Orders.

25 65. The minimum wage provisions of California Labor Code are enforceable by private
26 civil action pursuant to Labor Code § 1194(a) which states: "Notwithstanding any agreement to
27 work for a lesser wage, any employee receiving less than the legal minimum wage or the legal
28 overtime compensation applicable to the employee is entitled to recover in a civil action the

1 unpaid balance of the full amount of this minimum wage or overtime compensation, including
2 interest thereon, reasonable attorney's fees and costs of suit."

3 66. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
4 incorporates the applicable Wage Order of the California Industrial Welfare Commission. Also,
5 California Labor Code §§ 1194, 1197, 1197.1 and those Industrial Welfare Commission Wage
6 Orders entitle non-exempt employees to an amount equal to or greater than the minimum wage for
7 all hours worked. All hours must be paid at the statutory or agreed rate, or at the minimum rate in
8 the absence of a contractually agreed upon one. The underpayment of wages to Plaintiff and the
9 Class members is and has been a direct consequence of Defendants' unlawful compensation
10 policies and practices, which applied uniformly to the Class members working at locations
11 throughout California.

12 67. In committing the above described violations of the California Labor Code,
13 Defendants inaccurately recorded, or required Plaintiff and the Class members to input times that
14 did not reflect their actual hours worked, or calculated the correct time worked and consequently
15 underpaid the actual time worked by Plaintiff and other members of the Class, including by
16 requiring off the clock work and rounding, as addressed in detail above. Defendants acted in an
17 illegal attempt to avoid the payment of all earned wages, and other benefits in violation of the
18 California Labor Code, the Industrial Welfare Commission requirements and other applicable laws
19 and regulations. As a result of these violations, Defendants also failed to timely pay all wages
20 earned in accordance with California Labor Code § 1194.

21 68. California Labor Code § 1194.2 also provides for the following remedies: "In any
22 action under Section 1194 . . . to recover wages because of the payment of a wage less than the
23 minimum wages fixed by an order of the commission, an employee shall be entitled to recover
24 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon."

25 69. In addition to restitution for all unpaid wages, pursuant to California Labor Code §
26 1197.1, Plaintiff and Class members are entitled to recover a penalty of \$100.00 for the initial
27 failure to timely pay each employee minimum wages, and \$250.00 for each subsequent failure to
28 pay each employee minimum wages.

70. Pursuant to California Labor Code § 1194.2, Plaintiff and Class members are further entitled to recover liquidated damages in an amount equal to wages unlawfully unpaid and interest thereon.

71. Defendants have the ability to pay minimum wages for all time worked and have willfully refused to pay such wages with the intent to secure for Defendants a discount upon this indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud Employees.

72. Wherefore, Plaintiff and the Employee Class members are entitled to recover the unpaid minimum wages (including double minimum wages), liquidated damages in an amount equal to the minimum wages unlawfully unpaid, interest thereon and reasonable attorney's fees and costs of suit pursuant to California Labor Code § 1194(a). Plaintiff and the other members of the Class further request recovery of all unpaid wages, according to proof, interest, statutory costs, as well as the assessment of any statutory and/or civil penalties against Defendants, in a sum as provided by the California Labor Code, including § 558, and/or other applicable statutes. To the extent minimum wage compensation is determined to be owed to the Class members who have terminated their employment, Defendants' conduct also violates Labor Code §§ 201 and/or 202, and therefore these individuals are also be entitled to waiting time penalties under California Labor Code § 203, which penalties are sought herein on behalf of these Class members. Defendants' failure to timely pay all wages owed also violated Labor Code § 204 for failure to pay all wages owed twice monthly, and resulted in violations of Labor Code § 226 because they resulted in the issuance of inaccurate wage statements. Defendants' conduct as alleged herein was willful, intentional and not in good faith. Further, Plaintiff and other Class members are entitled to seek and recover statutory costs.

SECOND CAUSE OF ACTION

FAILURE TO PAY WAGES AND OVERTIME UNDER LABOR CODE § 510

(Against All Defendants)

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

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

7 75. By their conduct, as set forth herein, Defendants violated Labor Code § 1194 and
8 Labor Code § 510 (and paragraphs 2(K), 2(S), 3(A) and 4(A)-4(B) of the relevant orders of the
9 Industrial Welfare Commission) by failing to pay Employees for all their hours worked, including:
10 (a) time and one-half their regular hourly rates for hours worked in excess of eight hours in a
11 workday or in excess of forty hours in any workweek or for the first eight hours worked on the
12 seventh day of work in any one workweek; or (b) twice their regular rate of pay for hours worked
13 in excess of twelve hours in any one day or for hours worked in excess of eight hours on any
14 seventh day of work in a workweek. Defendants had a consistent policy of not paying Employees
15 wages for all hours worked, including by requiring off the clock work as addressed above and by
16 under-reporting actual hours worked, often with the specific intention of avoiding having to pay
17 overtime. With work shifts generally being scheduled for eight hours or more, this unpaid off the
18 clock work resulted in Plaintiff and the Class members working past eight hours on a shift, which
19 required that they be paid at the correct overtime rate of 1.5 times their regular rate.

20 76. Defendants thus had a consistent policy of not paying Employees wages for all
21 hours worked, including hours at their required regular, overtime, and double-time rates, and as
22 required under applicable living wage ordinances. Defendants required Plaintiff and the Class
23 members to work off the clock to avoid paying all their earned and owed straight time and
24 overtime wages and other benefits, in violation of the California Labor Code, the California Code
25 of Regulations and the IWC Wage Orders and guidelines set forth by the Division of Labor
26 Standards and Enforcement. Defendants have also violated these provisions by requiring Plaintiff
27 and other similarly situated non-exempt employees to work through meal periods when they were
28 required to be clocked out or to otherwise work off the clock to complete their daily job duties or

1 and participate in company required activities or remain under Defendants' control. Therefore,
2 Employees were not properly compensated, nor were they paid overtime rates for hours worked in
3 excess of eight hours in a given day, and/or forty hours in a given week. Based on information and
4 belief, Defendants did not make available to Employees a reasonable protocol for correcting time
5 records when Employees worked overtime hours or to fix incorrect time entries or those that
6 Defendants unlawfully under-recorded to the Employee's detriment. Defendants also under-paid
7 Plaintiff and the putative Class members all wages by systematically miscalculating and
8 underpaying overtime wages they earned.

9 77. Defendants' failure to pay Plaintiff and the Class members the unpaid balance of
10 regular wages owed and overtime compensation for all hours worked, as required by California
11 law, violates the provisions of Labor Code §§ 510 and 1198 and paragraph 3(A) of the applicable
12 IWC Wage Order, and is therefore unlawful.

13 78. Additionally, Labor Code § 558(a) provides "any employer or other person acting
14 on behalf of an employer who violates, or causes to be violated, a section of this chapter or any
15 provisions regulating hours and days of work in any order of the IWC shall be subject to a civil
16 penalty as follows: (1) For any violation, fifty dollars (\$50) for each underpaid employee for each
17 pay period for which the employee was underpaid in addition to an amount sufficient to recover
18 underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each
19 underpaid employee for each pay period for which the employee was underpaid in addition to an
20 amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall
21 be paid to the affected employee." Labor Code § 558(c) states, "the civil penalties provided for in
22 this section are in addition to any other civil or criminal penalty provided by law." Defendants
23 have violated provisions of the Labor Code regulating hours and days of work as well as the IWC
24 Wage Orders. Accordingly, Plaintiff and the Class members seek the remedies set forth in Labor
25 Code § 558.

26 79. Defendants' failure to pay compensation in a timely fashion also constituted a
27 violation of California Labor Code § 204, which requires that all wages shall be paid
28 semimonthly. From four (4) years prior to the filing of this lawsuit to the present, in direct

1 violation of that provision of the California Labor Code, Defendants have failed to pay all wages
2 and overtime compensation earned by Employees. Each such failure to make a timely payment of
3 compensation to Employees constitutes a separate violation of California Labor Code § 204.

4 80. Employees have been damaged by these violations of California Labor Code §§
5 204 and 510 (and the relevant orders of the Industrial Welfare Commission). Additionally, under
6 Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants are subject to a fine of not less
7 than \$100 for causing Employees “to work for longer hours than those fixed, or under conditions
8 of labor prohibited by an order of the commission” or if the employer pays “a wage less than the
9 minimum fixed by an order of the commission” or “violates...any provision of this chapter or
10 any order or ruling of the commission.”

11 81. Consequently, pursuant to the California Labor Code, including Labor Code §§
12 204, 510, 558, 1174, 1194, 1198, 1199, and the relevant paragraphs of the IWC Wage Orders,
13 including paragraphs 2(K), 2(S), 3(A), 4, and 20, Defendants are liable to Employees for the full
14 amount of all their unpaid wages and overtime compensation for all their hours worked, with
15 interest, plus their reasonable attorneys’ fees and costs, as well as the assessment of any statutory
16 penalties against Defendants, and each of them, and any additional sums as provided by the
17 Labor Code and/or other statutes.

18 **THIRD CAUSE OF ACTION**

19 **MEAL-PERIOD LIABILITY UNDER LABOR CODE § 226.7**

20 **(Against All Defendants)**

21 82. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
22 full herein.

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

1 84. Defendants failed to provide Employees with meal periods as required under the
2 Labor Code and paragraph 11 of the applicable IWC Wage Order. Employees were often required
3 to work or to otherwise remain under Defendants' control during meal periods, or Defendants
4 provided them after Employees worked beyond the fifth hour of their shifts or Employees
5 otherwise had them shortened and interrupted by work demands and requirements to remain under
6 Defendants' control during off the clock time. Furthermore, upon information and belief, on the
7 occasions when Employees worked more than ten hours in a given shift, they did so without
8 receiving a second uninterrupted thirty minute meal period as required by law.

9 85. Defendants thus failed to provide Plaintiff and the Class members with meal
10 periods as required by the Labor Code and paragraph 11 of the applicable IWC Wage Order,
11 including by not providing them with the opportunity to take meal breaks, by providing them late
12 or for less than thirty (30) minutes, or by requiring them to perform work during breaks.

13 86. Moreover, Defendants failed to compensate Employees for each meal period not
14 provided or inadequately provided, as required under Labor Code § 226.7 and paragraphs 11 and
15 20 of the applicable IWC Wage Orders, which provide that, if an employer fails to provide an
16 employee a meal period in accordance with this section, the employer shall pay the employee one
17 (1) hour of pay at the employee's regular rate of compensation for each workday that the meal
18 period is not provided. Defendants failed to compensate the Employees in the Class for each meal
19 period not provided or inadequately provided, as required under Labor Code § 226.7 and
20 paragraphs 11 and 20 of the applicable IWC Wage Order.

21 87. Therefore, pursuant to Labor Code § 226.7 and paragraphs 11 and 20 of the
22 applicable IWC Wage Order, Employees in the Class are entitled to damages in an amount equal
23 to one (1) hour of wages at their effective hourly rates of pay for each meal period not provided or
24 deficiently provided, a sum to be proven at trial, as well as the assessment of any statutory
25 penalties against the Defendants, and each of them, in a sum as provided by the Labor Code and
26 other statutes and applicable IWC Wage Order paragraphs.

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1 **FOURTH CAUSE OF ACTION**

2 **REST-BREAK LIABILITY UNDER LABOR CODE § 226.7**

3 **(Against All Defendants)**

4 88. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
5 full herein.

6 89. Labor Code §§ 226.7 and paragraph 12 of the applicable IWC Wage Orders
7 provide that employers must authorize and permit all employees to take rest periods at the rate of
8 ten (10) minutes net rest time per four (4) work hours.

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

18 91. Labor Code §§ 226.7 and paragraphs 12 and 20 of the applicable IWC Wage
19 Orders provide that if an employer fails to provide an employee rest period in accordance with this
20 section, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of
21 compensation for each workday that the rest period is not provided.

22 92. Defendants, and each of them, have therefore intentionally and improperly denied
23 rest periods to Plaintiff and the Class members in violation of Labor Code §§ 226.7 and 512 and
24 paragraph 12 of the applicable IWC Wage Orders.

25 93. Defendants failed to authorize and permit Plaintiff and the Class members to take
26 rest periods, as required by the Labor Code. Moreover, Defendants did not compensate Employees
27 with an additional hour of pay at each Employee's hourly rate for each day that Defendants failed
28 to provide them with adequate rest breaks, as required under Labor Code § 226.7 and paragraphs

12 and 20 of the applicable IWC Wage Orders.

94. Therefore, pursuant to Labor Code § 226.7 and paragraphs 12 and 20 of the applicable IWC Wage Orders, Employees are entitled to damages in an amount equal to one (1) hour of wages at their effective hourly rates of pay for each day worked without the required rest breaks, a sum to be proven at trial, as well as the assessment of any statutory penalties against Defendants, and each of them, in a sum as provided by the Labor Code and/or other statutes.

FIFTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 226(a)
(Against All Defendants)

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

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

97. Defendants failed to provide Plaintiff and the similarly situated Employee Class members with accurate itemized wage statements in writing, as required by the Labor Code and paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements given to Employees by Defendants failed to accurately account for wages, overtime, and premium pay, including by failing to pay for all hours worked, failure to pay for all overtime hours worked and for providing deficient meal periods and rest breaks, all of which Defendants knew or reasonably should have known were owed to the Employees, as alleged above.

98. Defendants also provided Plaintiff and the Class members with wage statements that failed to accurately report all hours worked and applicable hourly rates for all hours worked. Due to Defendants' failure to record and compensate for all hours worked or failure to do so

1 accurately, Plaintiff and the Employees in the Class were unable to discern from their wage
2 statements along the actual hours they worked in total during a pay period.

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

15 100. Plaintiff and the Class members suffered injury as a result of Defendants' knowing
16 and intentional failure to provide them with the wage and hour statements as required by law and
17 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
18 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
19 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
20 inclusive, and the Plaintiff and Class members cannot promptly and easily determine from the
21 wage statement alone one or more of the following: (i) The amount of the gross wages or net
22 wages paid to the employee during the pay period or any of the other information required to be
23 provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of
24 subdivision (a), (ii) Which deductions the employer made from gross wages to determine the net
25 wages paid to the employee during the pay period, (iii) The name and address of the employer
26 and, (iv) The name of the employee and only the last four digits of his or her social security
27 number or an employee identification number other than a social security number. For purposes
28 of Labor Code § 226(e) "promptly and easily determine" means a reasonable person [i.e. an

objective standard] would be able to readily ascertain the information without reference to other documents or information.

101. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers are required “to pay each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Plaintiff and the Class members may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

102. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code § 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the Class suffered injuries, including among other things confusion over whether they received all wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing them to make mathematical computations to analyze whether the wages paid in fact compensated them correctly for all hours worked.

103. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable IWC Wage Order, Plaintiff and the Employee Class members are entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000) under Section 226(e), and are entitled to recover further penalties pursuant to paragraphs 4(B) and 20 of the applicable IWC Wage Orders. They are also entitled to an award of costs and reasonable attorneys’ fees.

SIXTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 221
(Against All Defendants)

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

105. Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and public policy, an employer must timely pay its employees for all hours worked. Defendants failed to do so.

106. Defendants unlawfully received and/or collected wages from the Employees in the Class by implementing a policy understating the hours worked by Employees by requiring off the clock work and by automatically deducting time for meal periods when they were not lawfully provided, as alleged above. As also detailed above, Plaintiff’s supervisor also got so upset with all the time entry changes he was asked to make for missed or incorrect time punches that he started docking employees an hour of pay whenever he thought an employee missed a time punch. In such instances, Plaintiff and the Class members had their wages unlawfully deducted when Defendants’ managers recorded fewer hours worked in the timekeeping records than were in fact worked. By not compensating Employees for all hours worked, and the automatic deductions for unprovided meal periods and failure to pay for hours spent under Defendants’ control, Defendants unlawfully deducted wages earned by and owed to Plaintiff and the Class members, in violation of Labor Code § 221.

107. As a direct and proximate cause of the unauthorized deductions, Employees have been damaged, in an amount to be determined at trial.

SEVENTH CAUSE OF ACTION
VIOLATION OF LABOR CODE § 204
(Against All Defendants)

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

109. Labor Code § 204 instructs that: “All wages, ...earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month

1 during which the labor was performed, and labor performed between the 16th and the last day,
2 inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following
3 month.” Additionally, the requirements of this section shall be deemed satisfied by the payment
4 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven
5 calendar days following the close of the payroll period.” As detailed above, Defendants
6 maintained a consistently applied policy and practice of not paying all wages earned between the
7 1st and 15th days of a month between the 16th and 26th day and failed to pay all wages earned
8 between the 16th and the last day of the month between the 1st and 10th day of the following month.
9 This included failing to pay all wages due and owing to Plaintiff and the Class members for all
10 hours they worked and failing to pay all wages earned by not more than seven calendar days
11 following the close of the payroll period.

12 110. Defendants also required Plaintiff and the Class members to work hours off the
13 clock for which they were not compensated, including during interrupted or otherwise on-duty
14 meal and rest periods. Defendants also failed to pay all overtime premium wages owed for work
15 conducted on a work shift and a workday, as addressed above. Therefore, when Class members
16 received wage statements and pay checks, they did not compensate all hours worked on a timely
17 basis, resulting in Defendants’ systematic failure to pay all wages owed to Plaintiff and the Class
18 members twice monthly in accordance with the requirements of Labor Code § 204.

19 111. Also, Plaintiff, and upon information and belief the other Class members, were paid
20 bi-weekly, but often waited seven days or longer after the close of the pay period to receive
21 paychecks. Defendants and their PEO (TriNet) would issue Employees paychecks and wage
22 statements listing a check date of six or seven days after the close of the corresponding bi-weekly
23 pay period. By the time Defendants’ management received and then provided these to Plaintiff and
24 the class members at a point in time, it was often after seven days from the close of the prior pay
25 period. In some instances, Defendants even forgot to issue a check and wage statement to Plaintiff
26 and he did not receive payment until a week or two after the close of the preceding pay period.
27 Given the above described off the clock work and unlawful rounding and deductions from hours
28 worked perpetrated by Defendants’ management, Plaintiff would often notice on his wage

1 statements that he was being paid for substantially fewer hours than he actually worked, and that
2 he was not paid at the correct overtime rate for all hours he worked after eight hours into a shift or
3 over forty in a work week. Defendants' uniformly applied payroll policies and practices thus
4 resulted in further systematic and ongoing violations of the requirements of Labor Code § 204.

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

10 113. Defendants violated Labor Code § 204 by systematically refusing to timely pay
11 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
12 applicable IWC Wage Orders, employers are required "to pay each employee, on the established
13 payday for the period involved, not less than the applicable minimum wage for all hours worked in
14 the payroll period, ..." Under Labor Code § 1198, "[t]he employment of any employee for longer
15 hours than those fixed by the order or under conditions of labor prohibited by the order is
16 unlawful." Plaintiff and the Class members may therefore pursue damages and penalties for
17 violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including
18 penalties under paragraph 20 of the applicable IWC Wage Orders.

19 114. As a result of the unlawful acts of Defendants, Plaintiff and the Class they seek to
20 represent have been deprived of wages in amounts to be determined at trial, and they are entitled
21 to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs,
22 pursuant to Labor Code § 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the
23 applicable IWC Wage Orders.

24 **EIGHTH CAUSE OF ACTION**
25 **VIOLATION OF LABOR CODE § 203**
26 **(Against All Defendants)**

27 115. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
28 full herein.

1 116. Plaintiff and numerous Class members are no longer employed by Defendants; they
2 either quit Defendants' employ or were fired therefrom.

3 117. Defendants failed to pay these Employees all wages due and certain at the time of
4 termination or within seventy-two (72) hours of resignation, as addressed in detail above.

5 118. The wages withheld from these Employees by Defendants remained due and owing
6 for more than thirty (30) days from the date of separation from employment.

7 119. Defendants failed to pay Plaintiff and the Class members without abatement, all
8 wages as defined by applicable California law. Among other things, these Employees were not
9 paid all regular and overtime wages, including by Defendants failing to pay for all hours worked
10 or requiring off the clock work or by unlawfully under-recording time entries to the detriment of
11 Employees, and Defendants failed to pay premium wages owed for unprovided meal periods and
12 rest periods, as further detailed in this Complaint. Defendants' failure to pay said wages within the
13 required time was willful within the meaning of Labor Code § 203.

14 120. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
15 are required "to pay each employee, on the established payday for the period involved, not less
16 than the applicable minimum wage for all hours worked in the payroll period, ..." Under Labor
17 Code § 1198, "[t]he employment of any employee for longer hours than those fixed by the order
18 or under conditions of labor prohibited by the order is unlawful." Plaintiff and the Class members
19 may therefore pursue damages and penalties for violations of Labor Code § 203 and paragraph
20 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
21 IWC Wage Orders. Also, under Labor Code § 1199(a)-(c), it is a misdemeanor and Defendants
22 are subject to a fine of not less than \$100 for causing Employees "to work for longer hours than
23 those fixed, or under conditions of labor prohibited by an order of the commission" or if the
24 employer pays "a wage less than the minimum fixed by an order of the commission" or
25 "violates...any provision of this chapter or any order or ruling of the commission."

26 121. Defendants' failure to pay wages, as alleged, entitles Plaintiff and these former
27 Employee Class members to penalties under Labor Code § 203 and the applicable paragraphs of
28 the IWC Wage Orders as addressed above, including the requirement that an employee's wages

1 shall continue until paid for up to thirty (30) days from the date they were due.

2 **NINTH CAUSE OF ACTION**
3 **FOR FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**
4 **UNDER LABOR CODE § 2802**
5 **(Against All Defendants)**

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

8 123. Plaintiff and the Class are informed and believe and based thereon alleges that
9 throughout the period applicable, Defendants required Plaintiff and the Class members to pay for
10 necessary work related expenses they incurred. Defendants maintained the warehouses at near
11 freezing temperatures, but did not provide necessary cold-weather gear or specialized gloves
12 required by the Class members to work in that frigid environment. Also, Defendants required
13 Plaintiff and the Class members to use their cellular phones to conduct work related business and
14 to receive scheduling and location assignments. Defendants also used the personal cellular phones
15 for the Class members as the primary means for contacting them both during and after work shifts
16 regarding work scheduling or other company specific business, and Plaintiff and other similarly
17 situated employees were required to respond. This also prevented them from taking uninterrupted
18 and duty-free rest breaks and meal periods.

19 124. Defendants thus followed a uniform policy and practice of failing to reimburse
20 Employees in the Class for these necessary work related expenses or losses incurred in direct
21 discharge of their job duties during employment with Defendants and at the direction of the
22 Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9.

23 125. Defendants' knowing and willful failure to reimburse lawful necessary work related
24 expenses and losses to Plaintiff and the Class members resulted in damages because, among other
25 things, Defendants did not inform employees of their right to be reimbursed for those work related
26 expenses. As Defendants failed to inform and misled Plaintiff and the Class members with regard
27 to their rights, Plaintiff and the Class members were led to believe that incurring those lawful and
28 necessary expenses was an expected and essential function of their employment with Defendants

1 and that failure to incur those expenses would have adverse consequences on their employment.

2 126. Therefore, Plaintiff and the Class members are entitled to reimbursement for any
3 and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9
4 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while
5 employed by Defendants, as well as accrued interest on those expenses that were not reimbursed
6 from the date Plaintiff and the Class members incurred those expenses. Further, Plaintiff and the
7 Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

8 **TENTH CAUSE OF ACTION**

9 **FAILURE TO MAINTAIN TEMPERATURES UNDER THE WAGE ORDERS**

10 **(Against All Defendants)**

11 127. Plaintiff re-alleges and incorporates all preceding paragraphs, as though set forth in
12 full herein.

13 128. Under Labor Code § 1198, "[t]he employment of any employee for longer hours
14 than those fixed by the order or under conditions of labor prohibited by the order is unlawful."
15 Additionally, paragraph 15 of the applicable IWC Wage Orders requires the following regarding
16 the temperatures maintained at employers facilities within California: "(A) The temperature
17 maintained in each work area shall provide reasonable comfort consistent with industry-wide
18 standards for the nature of the process and the work performed. (B) ... Where the nature of the
19 employment requires a temperature of less than 60° F., a heated room shall be provided to which
20 employees may retire for warmth, and such room shall be maintained at not less than 68°..."

21 129. Under Labor Code §1199: "Every employer or other person acting either
22 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
23 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
24 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
25 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
26 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by
27 an order of the commission..."

28 ///

1 130. Under Labor Code §1199: “Every employer or other person acting either
2 individually or as an officer, agent, or employee of another person is guilty of a misdemeanor and
3 is punishable by a fine of not less than one hundred dollars (\$100) or by imprisonment for not less
4 than 30 days, or by both, who does any of the following: (a) Requires or causes any employee to
5 work for longer hours than those fixed, or under conditions of labor prohibited by an order of the
6 commission. (b) Pays or causes to be paid to any employee a wage less than the minimum fixed by
7 an order of the commission...”

8 131. During the relevant time period, as detailed above, Defendants violated Labor Code
9 §§ 1198 and 1199 and paragraph 15 of the IWC Wage Orders by failing to provide Plaintiff and
10 other aggrieved employees with reasonable comfort by maintaining the indoor temperature within
11 the range of industry standards by, inter alia, maintaining warehouse temperatures near freezing
12 such that Class members could not perform their job duties without purchasing their own cold-
13 weather gear (without reimbursement) and by failing to maintain appropriate warming or heated
14 rooms as required under paragraph 15 of the applicable Wage Orders.

15 132. These practices and policies resulted in Defendants’ failure to maintain temperature
16 providing reasonable comfort in violation of Labor Code §§ 1198 and 1199 and paragraph 15 of
17 the applicable IWC Wage Orders. Plaintiff and the Class members may therefore pursue damages
18 and penalties for violations of Labor Code §§ 1198 and 1199 and paragraph 15 of the applicable
19 IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders, in
20 an amount to be determined at trial.

21 **ELEVENTH CAUSE OF ACTION**

22 **VIOLATION OF BUSINESS & PROFESSIONS CODE § 17200 *ET SEQ.***

23 **(Against All Defendants)**

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

26 134. Plaintiff, on behalf of himself, the Employees in the Class, and the general public,
27 brings this claim pursuant to Business & Professions Code § 17200 *et seq.* The conduct of
28 Defendants as alleged in this Complaint has been and continues to be unfair, unlawful, and

1 harmful to Employees and the general public. Plaintiff seek to enforce important rights affecting
2 the public interest within the meaning of Code of Civil Procedure § 1021.5.

3 135. Plaintiff are “persons” within the meaning of Business & Professions Code
4 § 17204, have suffered injury, and therefore have standing to bring this cause of action for
5 injunctive relief, restitution, and other appropriate equitable relief.

6 136. Business & Professions Code § 17200 *et seq.* prohibits unlawful and unfair
7 business practices. By the conduct alleged herein, Defendants’ practices were deceptive and
8 fraudulent in that Defendants’ policy and practice failed to provide the required amount of
9 compensation for missed meal and rest breaks, and failed to adequately compensate Plaintiff and
10 Class members for all hours worked or reimburse them for necessary business expenses, due to
11 systematic business practices as alleged herein that cannot be justified, pursuant to the applicable
12 California Labor Code and Industrial Welfare Commission requirements in violation of California
13 Business and Professions Code §§ 17200, *et seq.*, and for which this Court should issue injunctive
14 and equitable relief, pursuant to California Business & Professions Code § 17203, including
15 restitution of wages wrongfully withheld.

16 137. Wage-and-hour laws express fundamental public policies. Paying employees their
17 wages and overtime, providing them with meal periods and rest breaks, etc., are fundamental
18 public policies of California. Labor Code § 90.5(a) articulates the public policies of this State
19 vigorously to enforce minimum labor standards, to ensure that employees are not required or
20 permitted to work under substandard and unlawful conditions, and to protect law-abiding
21 employers and their employees from competitors who lower costs to themselves by failing to
22 comply with minimum labor standards.

23 138. Defendants have violated statutes and public policies. Through the conduct alleged
24 in this Complaint Defendants have acted contrary to these public policies, have violated specific
25 provisions of the Labor Code, and have engaged in other unlawful and unfair business practices in
26 violation of Business & Professions Code § 17200 *et seq.*; which conduct has deprived Plaintiff,
27 and all persons similarly situated, and all interested persons, of the rights, benefits, and privileges
28 guaranteed to all employees under the law.

139. Defendants' conduct, as alleged above, constitutes unfair competition in violation of the Business & Professions Code § 17200 *et seq.*

140. Defendants, by engaging in the conduct herein alleged, by failing to pay wages and overtime, failing to provide meal periods and rest breaks, etc., either knew or in the exercise of reasonable care should have known that their conduct was unlawful; therefore their conduct violates the Business & Professions Code § 17200 *et seq.*

141. By the conduct alleged herein, Defendants have engaged and continue to engage in a business practice which violates California and federal law, including but not limited to, the applicable Industrial Wage Order(s), the California Code of Regulations, and the California Labor Code including Sections 204, 226, 226.7, 510, 512, 1194, 1197, and 1198 for which this Court should issue declaratory and other equitable relief pursuant to California Business & Professions Code § 17203 as may be necessary to prevent and remedy the conduct held to constitute unfair competition, including restitution of wages wrongfully withheld.

142. As a proximate result of the above-mentioned acts of Defendants, Employees have been damaged, in a sum to be proven at trial.

143. Unless restrained by this Court, Defendants will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this Court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use by Defendants or their agents or employees of any unlawful or deceptive practice prohibited by the Business & Professions Code, including but not limited to the disgorgement of such profits as may be necessary to restore Employees to the money Defendants have unlawfully failed to pay.

TWELFTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE § 2698, ET SEQ.

(Against All Defendants)

144. Plaintiff realleges and incorporates all preceding paragraphs, as though set forth in full herein.

1 145. Plaintiff and the Employees in the Class are also aggrieved employees as defined
2 under Labor Code § 2699(c) in that they suffered the violations alleged in this Complaint and
3 either were or are employed by the alleged violators, Defendants.

4 146. In failing to pay Aggrieved Employees minimum wages and overtime, not
5 providing proper meal and rest periods, failing to provide accurate itemized wage statements, and
6 failing to pay Employees wages upon termination or timely upon resignation, all discussed above,
7 Defendants failed to timely pay Aggrieved Employees wages on a semimonthly basis as required
8 under Labor Code § 204. Defendants also failed to maintain records showing accurate hours
9 worked daily and the wages paid to Aggrieved Employees, as required by Labor Code § 1174 and
10 paragraph 7 of the applicable IWC Wage Orders.

11 147. As such, Employees seek wages and penalties under Labor Code §§ 2698 and 2699
12 for Defendants' violation of Labor Code provisions included under Labor Code § 2699.5,
13 including the penalty provisions, without limitation, based, inter alia, on the following California
14 Labor Code sections: 201, 202, 203, 204, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185,
15 1194, 1194.1, 1194.2, 1197, 1197.1, 1198, 1199, 2802, and 2698 *et seq.*

16 148. More specifically, after complying with the notice procedures of Labor Code §
17 2699.3, Plaintiff asserts, as a representative action on behalf of the California Attorney General
18 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
19 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
20 including as follows:

21 (a) Wage Claims: For failure to provide Plaintiff and the Aggrieved Employees all
22 earned regular pay and minimum wages for regular hours worked and for failure to pay overtime
23 premium wages for overtime hours worked under Labor Code §§ 226.2, 510, 1194(a), 1197, and
24 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the applicable IWC Wage Order(s) seeking
25 all civil and statutory penalties available and applicable, and wages, under Labor Code §§ 510,
26 558, 1194.2, 1197.1, 1199, 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant
27 to Labor Code § 2699(g)(1);
28

1 (b) Meal and Rest Period Claims: For failure to provide Plaintiff and the Aggrieved
2 Employees off-duty, timely, and unpaid meal periods and failure to authorize and permit them to
3 take off-duty, timely, and paid rest periods, or pay one hour of regular pay in lieu thereof, under
4 Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A), and 12(B) of the applicable IWC
5 Wage Order(s) seeking all civil and statutory penalties available and applicable, including under
6 paragraph 20 of the applicable IWC Wage Orders, and wages under Labor Code §§ 226.7, 512,
7 558, including sections 558(a)(1)-(3), 1199 and 2699(f)(2), and also for attorneys' fees and costs
8 pursuant to Labor Code § 2699(g)(1);

9 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
10 Plaintiff and the Aggrieved Employees with accurate, itemized wage statements and failure to
11 maintain employment records for Plaintiff and Aggrieved Employees under Labor Code §§ 226,
12 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the applicable IWC Wage Order(s) seeking
13 all civil and statutory penalties and wages available and applicable under Labor Code §§ 226(e),
14 226.3, 558, 1174.5, 1199, and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Order,
15 and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by
16 providing inaccurate wage statements and failing to maintain records as required under Labor
17 Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor
18 Code §226.3, which in addition to other penalties provided by law, subjects Defendants to "a
19 penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial
20 citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent
21 citation, ...";

22 (d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at
23 least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204,
24 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages,
25 under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20
26 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code
27 § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1); and

(f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

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

(a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid 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.

150. Plaintiff has exhausted his administrative remedies by sending a certified letter to the LWDA and Defendants postmarked on **May 4, 2020** addressing in detail the specific provisions of the Labor Code Defendants have violated and addressing the facts and legal theories

1 to support the alleged violations and requested penalties. The LWDA has not provided notice of its
2 intent to investigate the alleged violations within 65 calendar days of the postmark date of the
3 letter, and Plaintiff adds this claim seeking penalties under the PAGA for the violations addressed
4 herein and in the PAGA Notice letter and the original Complaint.

5 **RELIEF REQUESTED**

6 WHEREFORE, Plaintiff prays for the following relief:

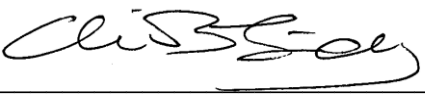
- 7 1. For an order certifying this action as a class action;
- 8 2. For compensatory damages in the amount of the unpaid minimum wages for work
9 performed by Employees and unpaid overtime compensation from at least four (4) years prior to
10 the filing of this action, as may be proven;
- 11 3. For liquidated damages in the amount equal to the unpaid minimum wage and
12 interest thereon, from at least four (4) years prior to the filing of this action, according to proof;
- 13 4. For compensatory damages in the amount of all unpaid wages, including overtime
14 and double-time pay, as may be proven;
- 15 5. For compensatory damages in the amount of the hourly wage made by Employees
16 for each missed or deficient meal period where no premium pay was paid therefor from four (4)
17 years prior to the filing of this action, as may be proven;
- 18 6. For compensatory damages in the amount of the hourly wage made by Employees
19 for each day requisite rest breaks were not provided or were deficiently provided where no
20 premium pay was paid therefor from at least four (4) years prior to the filing of this action, as may
21 be proven;
- 22 7. For penalties pursuant to Labor Code § 226(e) for Employees, as may be proven;
- 23 8. For restitution and/or damages and penalties for Defendants' failure to pay all
24 wages due twice monthly under Labor Code § 204, as may be proven;
- 25 9. For restitution and/or damages for all amounts unlawfully withheld from the wages
26 for all class members in violation of Labor Code § 221, as may be proven;
- 27 10. For penalties pursuant to Labor Code § 203 for all Employees who quit or were
28 fired in an amount equal to their daily wage times thirty (30) days, as may be proven;

11. For damages and restitution for failure to reimburse all reasonable and necessary business expenses incurred by Employees as required by Labor Code § 2802, as may be proven;
12. For liquidated damages pursuant to California Labor Code 1194.2(a) for failure to pay minimum wage;
13. For damages and civil penalties as appropriate under Labor Code §§ 1198 and 1199 and paragraphs 15 and 20 of the applicable IWC Wage Orders for Defendants' failure to maintain reasonable temperatures in the workplace, as may be proven;
14. For restitution for unfair competition pursuant to Business & Professions Code § 17200 *et seq.*, including disgorgement or profits, as may be proven;
15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this Complaint;
16. For penalties pursuant to Labor Code § 2698 *et seq.*, as may be proven;
17. For wages and penalties under Labor Code § 558, as may be proven;
18. For other wages and penalties under the Labor Code as may be proven;
19. For all general, special, and incidental damages as may be proven;
20. For an award of pre-judgment and post-judgment interest;
21. For an award providing for the payment of the costs of this suit;
22. For an award of attorneys' fees; and
23. For such other and further relief as this Court may deem proper and just.

DATED: July 14, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By



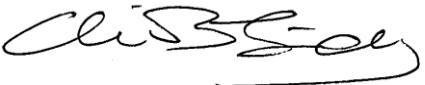
David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff JEFFREY LEWIS,
on behalf of himself and all others similarly
situated

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

DATED: July 14, 2020

DAVID YEREMIAN & ASSOCIATES, INC.

By 

David Yeremian
Alvin B. Lindsay
Attorneys for Plaintiff JEFFREY LEWIS,
on behalf of himself and all others similarly
situated

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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.

JPI SERVICES, INC.

JET PRO, INC.

[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.

[] (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.

Executed on July 15, 2020, at Glendale, California.

Natalia Bermudes