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on behalf of himself and others similarly situated

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

CUTBERTO MARQUEZ, on behalf of
himself and others similarly situated,

Plaintiff,

v.

BEN'S ASPHALT, INC., a California
corporation; BEN'S ASPHALT &
MAINTENANCE COMPANY, INC., a
California corporation; and DOES 1 through
100,

Defendants.

Case No.: 30-2020-01169302-CU-OE-CXC
Assigned for all purposes to: Judge Peter Wilson
Dept: CX102

CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:

1. Failure to Pay Minimum Wages
2. Failure to Pay All Overtime Wages
3. Meal Period Liability under Labor Code § 226.7
4. Rest Break Liability under Labor Code § 226.7
5. Failure to Provide Reporting-Time Pay
6. Failure to Reimburse for Business Expenses
7. Failure to Provide Accurate Itemized Employee Wage Statements
8. Failure to Pay All Wages Owed Timely and upon Separation of Employment
9. Violation of Labor Code § 1174(d)
10. Violation of Business & Professions Code §§ 17200, et seq.
11. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

1 Plaintiff Cutberto Marquez (“Plaintiff”), an individual, on behalf of himself, the State of
2 California, and all others similarly situated, alleges and complains of defendants Ben’s Asphalt,
3 Inc., a California corporation; Ben’s Asphalt & Maintenance Company, Inc., a California
4 corporation; and DOES 1 through 100 (collectively, “Defendants”), and each of them, as follows:

5 **I. INTRODUCTION**

6 1. This is a class action pursuant to California Code of Civil Procedure section 382
7 on behalf of Plaintiff and the following class: *All current and former hourly paid or non-exempt*
8 *employees who worked for Ben’s Asphalt, Inc., Ben’s Asphalt & Maintenance Company, Inc.,*
9 *and/or their predecessor or merged entities, within the State of California from four years prior*
10 *to the filing of the Complaint and continuing to the present* (the “Class” or “Class Members”).

11 2. Throughout the time period involved in this case, Defendants willfully maintained
12 a consistent policy of failing to pay all wages, including minimum wages, for all hours worked;
13 failing to pay all overtime wages; failing to provide timely duty-free meal periods; failing to
14 authorize and permit duty-free rest breaks; failing to provide reporting-time pay; failing to
15 reimburse business expenses; failing to maintain and provide accurate itemized wage statements;
16 and failing to pay all wages owed timely and upon separation of employment. Defendants’ illegal
17 conduct has also given rise to derivative claims for unfair business practices and violation of the
18 Private Attorneys General Act of 2004 (“PAGA”).

19 3. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant
20 to California Business & Professions Code sections 17200 through 17208, also seeks all monies
21 owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled.
22 Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal
23 and equitable relief allowed, plus interest, attorneys’ fees and costs.

24 4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees
25 (the “Aggrieved Employees”), also brings this representative action against Defendants to
26 recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled
27 to retain the services of counsel to file this action to protect his interests and those of Aggrieved
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1 Employees and has thereby incurred attorneys' fees and costs, which he is entitled to recover
2 under Labor Code section 2699.

3 5. For purposes of the allegations set forth herein, Class Members, along with
4 Aggrieved Employees comprising the PAGA representative action, are collectively referred to
5 as "Employees" except as otherwise specified.

6 **II. JURISDICTION AND VENUE**

7 6. This Court has subject matter jurisdiction over all causes of action asserted herein
8 pursuant to Article VI, section 10 of the California Constitution and California Code of Civil
9 Procedure section 410.10 by virtue of the fact that this is a civil action in which the matter in
10 controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted
11 arises under the laws of the State of California or is subject to adjudication in the courts of the
12 State of California.

13 7. This Court has personal jurisdiction over Defendants because each has caused
14 injuries in Orange County and the State of California through their acts, and by their violation of
15 the California Labor Code, California state common law, and California Business & Professions
16 Code sections 17200, *et seq.* Defendants also transact business throughout California and have
17 obtained the benefits of the laws of the United States and the State of California and are therefore
18 subject to the personal jurisdiction of this Court.

19 8. Venue as to each defendant is proper in this judicial district, pursuant to Code of
20 Civil Procedure section 395. Defendants operate within California and do business within Orange
21 County. The unlawful acts alleged herein have a direct effect on Plaintiff and Employees within
22 the State of California and Orange County.

23 9. This case should be classified as complex according to California Rules of Court,
24 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action;
25 will involve substantial documentary evidence and a large number of witnesses; is likely to
26 involve extensive motion practice raising difficult or novel issues that will be time-consuming to
27 resolve; and would require substantial post judgment judicial supervision.

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III. PARTIES

10. Plaintiff Cutberto Marquez is a resident of Santa Ana, California, and a citizen of California. At all relevant times herein, Defendants employed Plaintiff a non-exempt, hourly paid laborer from August 2019, until his separation on May 21, 2020, in Santa Ana, California and subjected him to the same employment policies and practices that affected Employees.

11. Plaintiff is informed and believes, and based thereon alleges, that Defendant Ben's Asphalt, Inc. is a California corporation.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendant Ben's Asphalt & Maintenance Company, Inc. is a California corporation.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the Labor Code and Industrial Welfare Commission ("IWC") Wage Orders, whose employees are engaged throughout this county and the State of California. During the relevant time period, Defendants employed Plaintiff and Employees within the State of California.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

15. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include DOES 1 through 100 identified herein.

16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each

Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes and based thereon alleges that Defendants are joint employers in that they employed Plaintiff and Employees at the same time and were operating as a joint enterprise and single entity at all relevant time periods.

17. California courts have recognized that the definition of “employer” for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California’s labor laws. *Martinez v. Combs* (2010) 49 Cal. 4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person may be liable for violations of the California Labor Code as to that person.

18. California law also permits and recognizes the piercing of a corporate veil between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise rule applies where “there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal. App. 4th at 512.

19. At all times throughout their employment, Plaintiff and Employees were regularly and consistently subject to the common policies and practices utilized by Defendants.

20. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours, and/or working conditions of Plaintiff and Employees at all relevant times herein, so as to be considered joint employers.

IV. FACTUAL BACKGROUND

Defendants Systematically Violated State Wage and Hour Laws

21. Defendants are asphalt paving contractors who provide various construction, repair, and maintenance services throughout Southern California. Plaintiff worked for

Defendants as a non-exempt, hourly paid laborer until his separation on May 21, 2020, in Santa Ana, California.

22. Plaintiff and Employees are non-exempt employees pursuant to the applicable IWC Wage Order(s).¹ This action seeks recovery for wages and compensation due and owing to Plaintiff and Employees under California laws for the maximum period allowed to the present, as set out herein.

23. Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code section 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

24. During the relevant time period, Defendants have had a consistent policy of failing to pay overtime wages to Plaintiff and Employees for all overtime hours worked they worked. The work times of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees were deprived wages at overtime premium amounts attributable to overtime hours.

25. By their common policy of requiring Plaintiff and Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the applicable overtime rate of pay, Defendants willfully violated the provisions of Labor Code sections 510 and 1198, as well as IWC Wage Order Nos. 16-2001 and 9-2001.

26. Throughout the applicable period of time, Defendants did not pay and continue not to pay Plaintiff and Employees at least the California minimum wage for all hours worked, violating Labor Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and Class

¹ Upon information and belief, Plaintiff alleges that IWC Wage Order Nos. 16-2001 and 9-2001 are applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable IWC Wage Order(s) that may be gleaned relevant after discovery.

Members are entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum wages.

27. Defendants regularly failed to provide Plaintiff and Employees with timely duty-free meal periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 16-2001 and 9-2001 require employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of work. *See also, Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours."). Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

28. Defendants regularly denied Plaintiff and Employees meal periods that comply with Labor Code sections 226.7, 512, and IWC Wage Order Nos. 16-2001 and 9-2001. By way of example, on numerous occasions, first meal breaks were not timely provided in that Plaintiff and Employees would have to work over five (5) hours without receiving a meal break. In addition, meal breaks were often less than thirty (30) minutes because Plaintiff and Employees were asked by Defendants and expected to work during meal periods. Plaintiff and Employees thus suffered late, short, interrupted, and/or missed meal breaks. Also, despite working shifts that exceeded ten (10) hours, Plaintiff and Employees were consistently deprived of second meal breaks altogether.

29. Defendants were also obligated but failed to authorize and permit Plaintiff and Employees to take net ten (10) minute rest breaks for shifts exceeding four (4) hours or a major fraction thereof worked as required by IWC Wage Order Nos. 16-2001 and 9-2001. Defendants regularly failed to provide Plaintiff and Employees with compliant duty-free rest breaks.

30. Plaintiff and Employees were not compensated with one (1) hour's worth of pay at their regular rate of compensation when they were not provided with compliant meal and rest periods in accordance with Labor Code section 226.7(b).

31. Plaintiff and Employees regularly reported to work at their scheduled times, but would sometimes be sent home by Defendants. Defendants did not pay Plaintiff or Employees reporting-time pay in those instances. On such days, an employee must be paid for at least half

1 of the hours scheduled to work, but in no case less than two (2) hours at the employee's regular
2 rate of pay; this is called reporting-time pay. *See, e.g.*, subdivision 5 (A) and (B) of Wage Order
3 16-2001 and 9-2001.

4 32. Defendants violated Labor Code section 2802 by failing to pay and indemnify
5 Plaintiff and Employees for their necessary business expenditures and losses incurred in direct
6 consequence of the discharge of their duties.

7 33. Labor Code section 203 provides "if an employer willfully fails to pay...any
8 wages of an employee who is discharged or who quits, the wages of the employee shall continue
9 as a penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th
10 487, 492.

11 34. Due to Defendants' non-compliant policies and/or practices described herein,
12 Plaintiff and Employees whose employment with Defendants concluded were not compensated
13 for, *inter alia*, all straight-time and overtime hours worked, all meal and rest break premiums,
14 and reporting-time pay owed. Thus, Defendants have failed to pay Plaintiff and Employees all
15 wages owed, whose sums were certain, at the time of termination or within seventy-two (72)
16 hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in
17 violation of Labor Code section 203.

18 35. Labor Code section 204 expressly requires that "[a]ll wages...earned by any
19 person in any employment are due and payable twice during each calendar month, on days
20 designated in advance by the employer as the regular paydays." Pursuant to Labor Code section
21 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly
22 or semimonthly payroll if the wages are paid not more than seven (7) calendar days following
23 the close of the payroll period." Due to Defendants' failure to pay Plaintiff and Employees for,
24 *inter alia*, all straight-time and overtime hours worked, Defendants failed to timely pay Plaintiff
25 and Employees within seven (7) days of the close of the payroll period in accordance with Labor
26 Code section 204 on a regular and consistent basis.

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1 36. Through Labor Code section 210 and the PAGA, and to the extent permitted by
2 law, Plaintiff and Aggrieved Employees are entitled to recover civil penalties for violations of
3 Labor Code section 204.

4 37. Plaintiff and Employees were not furnished with accurate itemized wage
5 statements that accurately showed their gross wages earned, net wages earned, premium
6 payments for meal and rest breaks, reporting-time pay, all applicable hourly rates and
7 corresponding number of hours worked at each hourly rate in effect during their pay periods, and
8 other information required by Labor Code section 226(a).

9 38. During the relevant time period, Defendants have knowingly and intentionally
10 failed to provide Plaintiff and Employees with the above-described writing through actions
11 alleged herein in violation of Labor Code section 226. Plaintiff and Employees have been injured
12 by Defendants' intentional violation of Labor Code section 226(a) because they were denied both
13 their legal right to receive, and their protected interest in receiving, accurate itemized wage
14 statements.

15 39. In addition, because Defendants failed to provide the accurate and mandated
16 information on the itemized wage statements, Plaintiff and Employees have been prevented by
17 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
18 underpayment. Plaintiff has had to file this lawsuit and will be required to conduct discovery and
19 perform computations in order to analyze whether, and to what extent, Plaintiff and Employees
20 suffered underpayment, thereby causing Plaintiff to incur expenses and time lost. Thus, Plaintiff
21 and Class Members are owed the amounts provided for in Labor Code section 226(e).

22 40. Further, for the violations described above, Plaintiff and Aggrieved Employees
23 may also recover civil penalties pursuant to Labor Code section 226.3 and the PAGA for
24 Defendants' violations of Labor Code section 226(a).

25 41. Additionally, Plaintiff and Employees have been denied their legal right and
26 protected interest in having available at a central location at the plant or establishment where they
27 are employed, accurate and complete payroll records showing the hours worked daily by, and the
28 wages paid to, Employees at those respective locations pursuant to Labor Code section 1174.

Pursuant to Labor Code section 1174.5 and the PAGA, Plaintiff and Aggrieved Employees may also recover civil penalties for violation of Labor Code section 1174(d).

42. Based on the foregoing, Defendants have also engaged in unlawful and unfair business practices in violation of California's Business and Professions Code sections 17200, *et seq.*, thereby entitling Plaintiff and Class Members to restitution, disgorgement of profits, and/or other equitable remedies.

V. CLASS ACTION ALLEGATIONS

43. Plaintiff brings this action on behalf of himself and all others similarly situated, as a class action pursuant to Code of Civil Procedure section 382. Plaintiff seeks to represent a proposed class comprised of and defined as follows:

All current and former hourly paid or non-exempt employees who worked for Ben's Asphalt, Inc., Ben's Asphalt & Maintenance Company, Inc., and/or their predecessor or merged entities, within the State of California from four years prior to the filing of the Complaint and continuing to the present (again, "Class" or "Class Members").

44. Plaintiff reserves the right under California Rule of Court, Rule 3.765(b), to amend or modify the class description identified herein with greater specificity or further division into subclasses or limitation to particular issues.

45. This action has been brought and may properly be maintained as a class action under the provisions of Code of Civil Procedure section 382 because there is a well-defined community of interest in the litigation and the Class is easily ascertainable.

A. Numerosity

46. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. While the precise number of Class Members has not been determined at this time, Plaintiff is informed and believes that there are approximately 120 Class Members employed by Defendants within the State of California at any given time. Accounting for employee turnover during the relevant periods necessarily increases this number substantially.

47. Plaintiff alleges Defendants' employment records would provide information as to the number and location of all Class Members.

1 **B. Commonality**

2 48. There are questions of law and fact common to the Class that predominate over
3 any questions affecting only individual Class Members. These common questions of law and fact
4 include, without limitation:

- 5 a. Whether Defendants' failure to pay wages, without abatement or
6 reduction, in accordance with the California Labor Code, was willful;
7 b. Whether Defendants had a corporate policy and/or practice of failing to
8 pay Class Members for all hours worked in violation of California law;
9 c. Whether Defendants failed to pay at least the minimum wage to Class
10 Members for all hours worked;
11 d. Whether Defendants required Class Members to work over eight (8) hours
12 per day and/or over forty (40) hours per week and failed to pay the legally
13 required overtime compensation to Class Members;
14 e. Whether Defendants deprived Class Members of legally compliant meal
15 and rest periods;
16 f. Whether Defendants required Class Members to work during meal and/or
17 rest periods without compensation;
18 g. Whether Defendants had a corporate policy and/or practice of failing to
19 pay Class Members premium payments for noncompliant (short, late,
20 interrupted, and/or missed altogether) meal periods and rest breaks in
21 violation of California law;
22 h. Whether Defendants failed to pay Class Members reporting-time pay;
23 i. Whether Defendants failed to reimburse Class Members for necessary
24 business-related expenses and costs;
25 j. Whether Defendants failed to timely pay all wages due to Class Members
26 during their employment;
27 k. Whether Defendants failed to pay all wages due to Class Members within
28 the required time upon their discharge or resignation;

- 1 l. Whether Defendants complied with wage reporting as required by the
2 California Labor Code, including, *inter alia*, section 226;
- 3 m. Whether Defendants kept complete and accurate payroll records as
4 required by the California Labor Code, including, *inter alia*, section
5 1174(d);
- 6 n. Whether Defendants' conduct was willful or reckless;
- 7 o. Whether Defendants engaged in unfair business practices in violation of
8 the Unfair Competition Law, Business and Professions Code sections
9 17200, *et seq.*;
- 10 p. Whether Class Members are entitled to compensatory damages pursuant
11 to the California Labor Code;
- 12 q. The appropriate amount of damages, restitution, and/or monetary penalties
13 resulting from Defendants' violation of California law;
- 14 r. Whether Class Members are entitled to attorneys' fees and costs; and
- 15 s. Whether Class Members are entitled to interest.

16 **C. Typicality**

17 49. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
18 Members sustained injuries and damages arising out of and caused by Defendants' common
19 course of conduct in violation of laws and regulations that have the force and effect of law and
20 statutes, as alleged herein.

21 **D. Adequacy of Representation**

22 50. Plaintiff will fairly and adequately represent and protect the interest of the Class.
23 Counsel who represent Plaintiff and Class Members are competent and experienced in litigating
24 wage and hour class actions, and have the financial resources to litigate the claims at issue.

25 **E. Superiority of Class Action**

26 51. A class action is superior to other available means for the fair and efficient
27 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
28 questions of law and fact common to the Class predominate over any questions affecting only

1 individual members of the Class. Each member of the Class has been damaged and is entitled to
2 recovery by reason of Defendants' illegal policy and/or practice of failing to properly pay
3 minimum wages and overtime for all hours worked, failing to provide timely duty-free meal
4 periods and/or pay premiums owed thereon, failing to authorize and permit duty-free rest breaks
5 and/or pay premiums owed thereon, failing to maintain and provide accurate itemized wage
6 statements, failing to pay reporting-time pay, failing to reimburse business expenses, failing to
7 pay all wages owed in a timely manner, failing to pay all wages due upon termination and/or
8 resignation, and engaging in unfair business practices.

9 52. Class action treatment will allow those similarly situated persons to litigate their
10 claims in a manner that is most efficient and economical for the parties and the judicial system.
11 Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this
12 action that would preclude its maintenance as a class action.

13 **FIRST CAUSE OF ACTION**

14 **FAILURE TO PAY MINIMUM WAGES**

15 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and IWC Wage Order Nos. 16-2001 and**
16 **9-2001**

17 **[On Behalf of Plaintiff and the Class against All Defendants]**

18 53. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
19 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
20 fully alleged herein.

21 54. Throughout the period of time applicable to this cause of action, Defendants did
22 not pay and continue to not pay Plaintiff and Class Members at least the California minimum
23 wage for all hours worked, thereby violating Labor Code section 1194 and IWC Wage Order
24 Nos. 16-2001 and 9-2001.

25 55. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
26 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a
27 result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum
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1 wage compensation, as well as interest, costs, attorneys' fees, and liquidated damages in an
2 amount equal to the wages unlawfully unpaid and interest thereon.

3 **SECOND CAUSE OF ACTION**

4 **FAILURE TO PAY ALL OVERTIME WAGES**

5 **Cal. Labor Code §§ 510 and 1198 and IWC Wage Order Nos. 16-2001 and 9-2001**

6 **[On Behalf of Plaintiff and the Class against All Defendants]**

7 56. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
8 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
9 fully set forth herein.

10 57. At all times relevant to this Complaint, Labor Code section 510(a) was in effect
11 and provided: "Eight hours of labor constitutes a day's work. Any work in excess of eight hours
12 in one workday and any work in excess of forty hours in any one workweek...shall be
13 compensated at the rate of no less than one and one-half times the regular rate of pay for an
14 employee."

15 58. Pursuant to subdivision 3 of IWC Wage Order Nos. 16-2001 and 9-2001, an
16 employee shall not be employed more than eight (8) hours in any workday and/or more than forty
17 (40) hours in any workweek unless the employee receives one and one-half (1½) times such
18 employee's regular rate of pay for all hours worked over eight (8) hours in any workday and/or
19 more than forty (40) hours in any workweek. Further, an employer must compensate employees
20 at no less than twice the regular rate of pay when an employee works more than twelve (12) hours
21 in a day or more than eight (8) hours on the seventh consecutive day of work.

22 59. At all times mentioned, Plaintiff and the Class regularly worked shifts that
23 consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a
24 workweek and were not paid proper overtime wages for all overtime hours worked as a result of,
25 but not limited to, Defendants' failure to pay for work performed off the clock, including, *inter*
26 *alia*, pre- and post- shift and during meal periods.

27 60. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8)
28 hours per day and/or forty (40) hours per week without properly compensating them overtime

wages, as described above, Defendants willfully violated the provisions of Labor Code section 1194.

61. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys' fees.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

Cal. Labor Code §§ 226.7, 512, and IWC Wage Order Nos. 16-2001 and 9-2001

[On Behalf of Plaintiff and the Class against All Defendants]

62. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

63. Labor Code section 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Similarly, Labor Code section 512 and IWC Wage Order Nos. 16-2001 and 9-2001 require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. *See also, Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours.") Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

64. Despite these legal requirements, Defendants regularly failed to provide both first and second meal periods that comply with Labor Code sections 512, 226.7, and IWC Wage Order Nos. 16-2001 and 9-2001. Plaintiff and Class Members were not provided timely and duty-free thirty (30) minute meal periods. Plaintiff and Class Members often experienced untimely and interrupted meal periods, and sometimes missed meal breaks altogether. Specifically, Plaintiff and Class Members did not always receive timely duty-free meal periods in that first meals would be taken after the fifth hour of work, meal periods were interrupted, or, on occasion, the demands

1 of employee job duties were such that they were prevented from taking a meal period altogether.
2 Moreover, Plaintiff and Class Members were required to take their meal periods on-premises
3 without compensation and without a lawful on-duty meal period agreement. According to the
4 California Department of Labor Standards Enforcement (“DLSE”): “If the employer requires the
5 employee to remain at the work site or facility during the meal period, the meal period must be
6 paid. This is true even where the employee is relieved of all work duties during the meal
7 period.” *Bono Enterprises, Inc. v. Bradshaw* (1995) 32 Cal. App. 4th 968. Having been subjected
8 to on-site, late, short, interrupted, and missed meal periods, Plaintiff and Class Members did not
9 receive their statutorily mandated meal periods.

10 65. To the extent Defendants claim that Plaintiff and Class Members waived their
11 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
12 applicable to those occasions when Plaintiff and Class Members worked shifts in excess of twelve
13 (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period agreements
14 where the nature of the work does not prevent them from being relieved of all duties.

15 66. Under Labor Code section 226.7 and IWC Wage Order Nos. 16-2001 and 9-2001,
16 Plaintiff and each Class Member is entitled to be paid one (1) hour of additional wages for each
17 day he or she was not provided with all required meal periods. Defendants regularly failed to pay
18 Plaintiff and Class Members the additional wages to which they were entitled for non-compliant
19 meal periods.

20 67. As a result, Defendants are liable to Plaintiff and each Class Member for one (1)
21 hour of additional wages for each workday a compliant meal period was not provided.

22 **FOURTH CAUSE OF ACTION**

23 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**

24 **Cal. Labor Code § 226.7 and IWC Wage Order Nos. 16-2001 and 9-2001**

25 **[On Behalf of Plaintiff and the Class against All Defendants]**

26 68. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
27 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
28 fully alleged herein.

1 69. Under subdivision 11 of Wage Order No. 16-2001 and subdivision 12 of Wage
2 Order No. 9-2001, an employer must authorize and permit all employees to take ten (10) minute
3 duty free rest periods for every major fraction of four (4) hours worked. Labor Code section 226.7
4 provides “an employer shall not require an employee to work during a meal or rest or recovery
5 period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of
6 the Industrial Welfare Commission.”

7 70. Defendants are required by California law to authorize and permit breaks of ten
8 (10) uninterrupted minutes for each four (4) hours of work or major fraction thereof (i.e., more
9 than two hours). That is, the required number of rest breaks is equal to the number of work hours
10 divided by four, and if the work time is not evenly divisible by four, any remainder of two hours
11 or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class
12 Member’s work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the
13 work time is nine hours, the employee is still entitled to only two rest breaks. (There is an
14 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure
15 to authorize rest breaks as so required is itself a violation of California’s rest break laws.

16 71. Despite these legal requirements, Defendants failed to authorize and permit
17 Plaintiff and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members
18 were subject to policies and/or practices that prevented them from taking legally compliant rest
19 periods. Defendants did not relieve Plaintiff and Class Members of all duties during their rest
20 breaks and regularly required them to be available to continue working – or, in fact, interrupted
21 them – during their rest breaks. Notwithstanding any formal written policy to the contrary,
22 Defendants’ actual custom and business practice was to undermine any formal policy of
23 permitting rest breaks by pressuring Class Members to perform their duties in a way that omitted
24 breaks, including, but not limited to, scheduling a heavy workload that made taking breaks
25 extremely difficult, maintaining an informal anti-rest break policy enforced through ridicule or
26 reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise
27 encouraging the skipping of legally protected breaks. Here, as a companywide practice and in
28 fact, Defendants did not offer Plaintiff and Class Members the opportunity to receive compliant

1 off-duty rest periods and, thus, “the court may not conclude employees voluntarily chose to
2 skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal. App. 4th 388, 410
3 (“[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not
4 conclude employees voluntarily chose to skip those breaks.”); *accord Brinker*, 53 Cal. 4th at
5 1033 (“No issue of waiver ever arises for a rest break that was required by law but never
6 authorized; if a break is not authorized, an employee has no opportunity to decline to take it.”)

7 72. Defendants retained control over Plaintiff and Class Members during their rest
8 periods. *See, Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 269 (concluding that
9 “during rest periods employers must relieve employees of all duties and relinquish control over
10 how employees spend their time.”). In *Augustus*, the court expressly rejected the employer’s
11 assertion that it could provide an on-duty rest period to employees who worked as security guards
12 and further explained “that employers [must] relinquish any control over how employees spend
13 their break time, and relieve their employees of all duties.” *Id.* at 273. During breaks employers
14 must relieve employees of all duties and relinquish control over how employees spend their time.

15 73. Plaintiff and Class Members were not compensated with one (1) hour’s worth of
16 pay at their regular rate of compensation when they were not provided with a compliant rest
17 break in accordance with Labor Code section 226.7(b).

18 74. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour
19 of additional of pay at their regular rates of compensation for each work day when a compliant
20 rest break was not provided, in a sum to be proven at trial.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO PROVIDE REPORTING-TIME PAY**

23 **IWC Wage Order Nos. 16-2001 and 9-2001**

24 **[On Behalf of Plaintiff and the Class against All Defendants]**

25 75. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
26 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
27 fully alleged herein.

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76. Plaintiff and Class Members regularly reported to work at their scheduled times, but would sometimes be sent home by Defendants. On such days, Plaintiff and Class Members must be paid for at least half of the hours scheduled to work, but in no case less than two (2) hours at their regular rates of pay; this is called reporting-time pay. *See, e.g.*, subdivision 5(A) and (B) of Wage Orders 16-2001 and 9-2001.

77. Defendants did not provide Plaintiff and Class Members reporting-time pay, in a sum to be proven at trial.

SIXTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

Cal. Labor Code § 2802

[On Behalf of Plaintiff and the Class against All Defendants]

78. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully set forth herein.

79. Labor Code section 2802 provides that “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” “Necessary business expenses” is defined to include all “reasonable expenses.” See, Labor Code § 2802(c); *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal. App. 4th 1137.

80. Plaintiff and Class Members incurred necessary business expenses (e.g., footwear, gloves, cost and use of personal cell phones) in discharging their duties. However, Defendants did not pay fully, or at all, for these necessary business expenses incurred by Plaintiff and Class Members.

81. Defendants' failure to pay for or reimburse the work-related business expenses of Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members by Labor Code section 2802.

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1 82. Plaintiff and Class Members are entitled to reimbursement for these necessary
2 expenditures, plus interest pursuant to Labor Code section 2802(b) and attorneys' fees and costs
3 under Labor Code section 2802(c).

4 **SEVENTH CAUSE OF ACTION**

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

6 **Cal. Labor Code §§ 226 and 226.3**

7 **[On Behalf of Plaintiff and the Class against All Defendants]**

8 83. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
9 reference all of the allegations contained in the preceding paragraphs as though fully set forth
10 herein.

11 84. Labor Code section 226(a) requires employers, semi-monthly or at the time or each
12 payment of wages, to furnish employees an accurate itemized statement in writing showing:

- 13 (1) gross wages earned;
- 14 (2) total hours worked by the employee;
- 15 (3) the number of piece-rate units earned and any applicable piece rate if the
16 employee is paid on a piece rate;
- 17 (4) all deductions, provided that all deductions made on written orders of the
18 employee may be aggregated and shown as one item;
- 19 (5) net wages earned;
- 20 (6) the inclusive dates of the period for which the employee is paid;
- 21 (7) the name of the employee and only the last four digits of his or her social
22 security number or an employee identification number other than a social
23 security number;
- 24 (8) the name and address of the legal entity that is the employer...; and
- 25 (9) all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee....

27 85. During the relevant time period, due to Defendants' failure to, *inter alia*, provide
28 Plaintiff and Class Members with lawful meal periods and rest breaks (and pay missed meal and

rest break premiums thereon), along with the failure to pay minimum and overtime wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5), and (9).

86. An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of costs and reasonable attorneys' fees.

87. The absence of accurate information on their wage statements has delayed timely challenge to Defendants' unlawful pay practices, requires discovery and mathematical computations to determine the amount of wages owed, causes difficulty and expense in attempting to reconstruct time and pay records, and led to submission of inaccurate information about wages and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not have had to engage in these efforts and incur these costs had Defendants provided accurate wage statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages from Defendants.

88. Thus, Plaintiff and Class Members have been injured by Defendants' intentional violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

89. Plaintiff and Class Members are thus entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with Labor Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee pursuant to Labor Code section 226(e), and/or any other allowable penalties including those pursuant to Labor Code section 226.3.

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1 **EIGHTH CAUSE OF ACTION**

2 **FAILURE TO PAY ALL WAGES OWED TIMELY**

3 **AND UPON SEPARATION OF EMPLOYMENT**

4 **Cal. Labor Code §§ 201, 202, 203, 204, and 210**

5 **[On Behalf of Plaintiff and the Class against All Defendants]**

6 90. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
7 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
8 fully alleged herein.

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

15 92. Labor Code section 203 provides that if an employer willfully fails to pay
16 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then
17 the employer is liable for penalties in the form of continued compensation up to thirty (30) work
18 days.

19 93. As alleged herein and above, Defendants' failure to pay wages was willful in that
20 Defendants knew wages (e.g., for off-the-clock work, underpaid overtime, unpaid premiums,
21 reporting-time pay) were owed to Plaintiff and Class Members, but failed to pay said wages, at
22 the time of termination, or within 72 hours of resignation, thus entitling Plaintiff and Class
23 Members to penalties under Labor Code section 203, which provides that an employee's wages
24 shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were
25 due.

26 94. Labor Code section 204 requires that all wages earned by any person in any
27 employment between the 1st and 15th day, inclusive, of any calendar month, other than those
28 wages due upon termination of an employee, are due and payable between the 16th and the 26th

1 day of the month during which the labor was performed, and that all wages earned by any person
2 in any employment between the 16th and the last day, inclusive, of any calendar month, other
3 than those wages due upon termination of an employee, are due and payable between the 1st and
4 10th day of the following month. Section 204 also requires that all wages earned for labor in
5 excess of the normal work period shall be paid no later than the payday for the next regular
6 payroll period.

7 95. The requirements of Labor Code section 204 shall be deemed satisfied by the
8 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
9 than seven (7) calendar days following the close of the payroll period when the wages were
10 earned.

11 96. During the relevant time period, Defendants failed to pay Plaintiff and Class
12 Members all wages due to them within any time period specified by Labor Code section 204
13 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
14 rest break premiums and reporting-time pay.

15 97. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
16 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
17 imposes upon Defendants for each subsequent violation, or any willful or intentional violation,
18 of failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
19 unlawfully withheld.

20 98. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil
21 Code sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys'
22 fees and costs incurred by him in this action, along with pre-judgment interest on all amounts
23 recovered herein, as well as any statutory penalties Defendants may owe under the California
24 Labor Code and/or any other statute.

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1 **NINTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 1174(d)**

3 **[On Behalf of Plaintiff and the Class against All Defendants]**

4 99. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
5 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
6 fully alleged herein.

7 100. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central
8 location in the state or at the plants or establishments at which employees are employed, payroll
9 records showing the hours worked daily by and the wages paid to employees employed at the
10 respective plants or establishments. These records shall be kept in accordance with rules
11 established for this purpose by the commission, but in any case shall be kept on file for not less
12 than two (2) years.

13 101. Defendants have intentionally and willfully failed to keep accurate and complete
14 payroll records showing the hours worked daily and the wages paid to Plaintiff and Class
15 Members.

16 102. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiff
17 and Class Members have suffered injury and damage to their statutorily protected rights.

18 103. More specifically, Plaintiff and Class Members have been injured by Defendants'
19 intentional and willful violation of Labor Code section 1174(d) because they were denied both
20 their legal right and protected interest in having available, accurate, and complete payroll records
21 pursuant to Labor Code section 1174(d).

22 **TENTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION LAW VIOLATIONS**

24 **Cal. Business & Professions Code §§ 17200, *et seq.***

25 **[On Behalf of Plaintiff and the Class against All Defendants]**

26 104. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
27 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
28 fully set forth herein.

1 105. The Unfair Competition Law (“UCL”), California Business & Professions Code
2 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
3 & Professions Code section 17204 allows “any person who has suffered injury in fact and has
4 lost money or property” to prosecute a civil action for violation of the UCL. Such a person may
5 bring such an action on behalf of himself or herself and others similarly situated who are affected
6 by the unlawful, unfair, or fraudulent business practice.

7 106. The statute of limitations for a claim under the UCL is four (4) years. Accordingly,
8 the actionable period for this cause of action is four (4) years prior to the filing of this Complaint
9 through the present, and on-going until the violations are corrected, and/or the Class is certified.

10 107. Labor Code section 90.5(a) states that it is the public policy of California to
11 vigorously enforce minimum labor standards in order to ensure employees are not required to
12 work under substandard and unlawful conditions, and to protect employers who comply with the
13 law from those who attempt to gain competitive advantage at the expense of their workers by
14 failing to comply with minimum labor standards.

15 108. A violation of Business and Professions Code sections 17200, *et seq.* may be
16 predicated upon the violation of any state or federal law. Defendants’ policies and/or practices
17 have violated state law in at least the following respects:

18 (a) Requiring Plaintiff and Class Members to work without paying them minimum
19 wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and IWC
20 Wage Order Nos. 16-2001 and 9-2001;

21 (b) Requiring Plaintiff and Class Members to work overtime without paying them
22 proper compensation in violation of Labor Code sections 510, 1198, and IWC Wage Order Nos.
23 16-2001 and 9-2001;

24 (c) Failing to provide Plaintiff and Class Members timely duty-free meal periods and
25 failing to authorize and permit Plaintiff and Class Members to take duty-free rest breaks in
26 violation of Labor Code sections 226.7, 512, and IWC Wage Order Nos. 16-2001 and 9-2001;

27 (d) Failing to pay Plaintiff and Class Members reporting-time pay, in violation of
28 subdivision 5(A) and (B) of Wage Orders 16-2001 and 9-2001;

1 (e) Failing to reimburse Plaintiff and Class Members for necessary business expenses
2 incurred in performing their job duties, in violation of Labor Code section 2802;

3 (f) Failing to timely pay all wages to Plaintiff and Class Members during their
4 employment and upon separation of employment, in violation of Labor Code sections 201, 202,
5 203, 204, and 210; and

6 (g) Failing to maintain and provide Plaintiff and Class Members with accurate
7 itemized wage statements, in violation of Labor Code section 226.

8 Thus, Defendants engaged in unlawful competition in violation of section 17200, *et seq.*
9 of the California Business & Professions Code by violating sections 201, 202, 203, 204, 210,
10 226, 226.7, 510, 512, 1194, 1194.2, 1197, and 2802 of the Labor Code and IWC Wage Order
11 Nos. 16-2001 and 9-2001.

12 109. As a direct and proximate result of Defendants' unlawful business practices,
13 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
14 damaged Plaintiff and Class Members by wrongfully denying them all wages, including
15 minimum and overtime wages, failing to pay all meal and rest breaks premiums owed, failing to
16 provide reporting-time pay, and failing to reimburse business expenses, along with the
17 corresponding interest where applicable, in a timely manner and upon separation, and while
18 supplying them inaccurate and misleading wage statements. Such conduct is substantially
19 injurious to Plaintiff and Class Members.

20 110. Additionally, Defendants intentionally avoided paying Plaintiff and Class
21 Members' wages and monies, thereby creating for Defendants an artificially lower cost of doing
22 business in order to undercut their competitors and establish a greater foothold in the
23 marketplace. Through their actions alleged herein, Defendants have engaged in unfair
24 competition within the meaning of section 17200 of the California Business & Professions Code.

25 111. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
26 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California
27 Business & Professions Code sections 17203 and 17208 from at least four (4) years prior to the
28 filing of this Complaint through the date of such restitution, at rates specified by law. Defendants

1 should be required to disgorge all of the profits and gains they have reaped and restore such
2 profits and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

3 112. Defendants' course of conduct, acts, and practices in violation of the California
4 laws mentioned above constitute independent violations of section 17200, *et seq.* of the
5 California Business & Professions Code.

6 113. Plaintiff and Class Members are entitled to enforce all applicable penalty
7 provisions of the Labor Code pursuant to California Business & Professions Code section 17202.

8 114. Plaintiff has assumed the responsibility of enforcement of the laws and public
9 policies specified herein by suing on behalf of himself and Class Members previously or
10 presently employed by Defendants in California. Plaintiff's success in this action will enforce
11 important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing
12 this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
13 appropriate pursuant to Code of Civil Procedure section 1021.5.

14 **ELEVENTH CAUSE OF ACTION**

15 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

16 **Cal. Labor Code §§ 2698, *et seq.***

17 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

18 115. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
19 incorporates by reference all of the allegations contained in the previous paragraphs of this
20 Complaint as though fully set forth herein.

21 116. Plaintiff, on behalf of himself and Aggrieved Employees, brings this
22 representative action against Defendants to recover wages and penalties pursuant to the Private
23 Attorneys General Act of 2004 ("PAGA"), Labor Code section 2698, *et seq.*

24 117. Based on the above allegations incorporated by reference, Defendants have
25 violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1174.5,
26 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as IWC Wage Order Nos. 16-2001 and 9-
27 2001.

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1 118. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
2 section 2699 because of Defendants’ violations of Labor Code sections 201, 202, 203, 204, 210,
3 226, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well
4 as IWC Wage Order Nos. 16-2001 and 9-2001.

5 119. Under Labor Code sections 2699(a), (f), and 2699.5, for each such violation,
6 Plaintiff and Aggrieved Employees are entitled to penalties in an amount to be shown at the time
7 of trial subject to the following formula:

8 \$100.00 for the initial violation per employee per pay period; and

9 \$200.00 for each subsequent violation per employee per pay period.

10 These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce
11 Development Agency (“LWDA”) and twenty-five percent (25%) to the affected employees.
12 These penalties may be stacked separately for each of Defendants’ violations of the California
13 Labor Code.

14 120. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
15 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
16 PAGA penalties for Defendants’ violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
17 *& Assocs., LLC* (2017) 15 Cal. App. 5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec.
18 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after
19 *Friant* that “[t]o the extent the Court’s Order [granting summary judgment to *Home Depot*] was
20 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs’ derivative
21 claim for [PAGA] penalties under section 226(e)...the Court’s Order should not be read to grant
22 summary judgment on Plaintiffs’ claim for PAGA penalties based on violation of section
23 226(a).”]. For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
24 provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny employer
25 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of
26 two hundred fifty dollars (\$250) per employee per violation in an initial violation and one
27 thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the
28 employer fails to provide the employee a wage deduction statement or fails to keep the required

1 records in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent
2 permitted by law Plaintiff and Aggrieved Employees are entitled to recover penalties for
3 violations of Labor Code section 226.3 and seek default PAGA penalties for each of Defendants’
4 numerous violations of Labor Code section 226(a).

5 121. Labor Code section 210 provides that “[i]n addition to, an entirely independent
6 and apart from, any other penalty provided in this article, every person who fails to pay the wages
7 of each employee as provided in Sections...204...shall be subject to a civil penalty as follows:
8 (1) [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee;
9 (2) [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars
10 (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully
11 withheld.” As a result of the faulty compensation policies and/or practices, Plaintiff and
12 Aggrieved Employees are also entitled to recover penalties under Labor Code section 210
13 through PAGA.

14 122. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
15 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
16 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
17 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
18 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
19 which the employee is underpaid regardless of whether the initial violation is intentionally
20 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
21 Aggrieved Employees are entitled to recover penalties pursuant to Labor Code section 1197.1.

22 123. Plaintiff has fully and completely exhausted his administrative remedies under
23 PAGA prior to proceeding with the PAGA claim. On July 8, 2020, Plaintiff gave written notice
24 to the LWDA and by certified mail to Defendants of the specific code provisions alleged to have
25 been violated and paid the required filing fee. Plaintiff has not received notice from the LWDA
26 of its intent to investigate the alleged violations within sixty-five (65) calendar days of the
27 postmark date of the aforesaid letter.

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124. Plaintiff, as a personal representative of the general public, will and does seek to recover any and all penalties for each and every violation shown to exist or to have occurred during the one (1) year period before Plaintiff filed notice with the LWDA of his intent to bring an action, in an amount according to proof, as to those penalties that are otherwise only available to public agency enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

125. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the hourly wage made by Plaintiff and Class Members for each noncompliant meal period for which premium pay was not paid, as may be proven;
5. For compensatory damages in the amount of the hourly wage made by Plaintiff and Class Members for each day of noncompliant rest breaks for which premium pay was not paid, as may be proven;
6. For reimbursement of business expenditures, as may be proven;
7. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be proven;

1 8. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
2 Plaintiff and Class Members, as may be proven;

3 9. For compensatory damages in the amount of the unpaid reporting-time pay due to
4 Plaintiff and Class Members, as may be proven;

5 10. For restitution for unfair competition pursuant to the California Business &
6 Professions Code sections 17200, *et seq.*, including disgorgement of profits, as may be proven;

7 11. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00
8 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the
9 representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the
10 Private Attorneys General Act of 2004;

11 12. For all civil penalties available under section 210 of the Labor Code and the
12 Private Attorneys General Act of 2004;

13 13. For all civil penalties available under section 226.3 of the Labor Code and the
14 Private Attorneys General Act of 2004;

15 14. For all civil penalties available under section 1174.5 of the Labor Code and the
16 Private Attorneys General Act of 2004;

17 15. For all civil penalties available under section 1197.1 of the Labor Code and the
18 Private Attorneys General Act of 2004;

19 16. For an order enjoining Defendants and their agents, servants, and employees, and
20 all persons acting under, in concert with, or for them, from acting in derogation of any rights or
21 duties adumbrated in this complaint;

22 17. For an award of pre-judgment and post-judgment interest;

23 18. For an award providing for the payment of the costs of this suit;

24 19. For an award of attorneys' fees, to the extent provided by law; and

25 20. For such other and further relief as the Court may deem proper and just.

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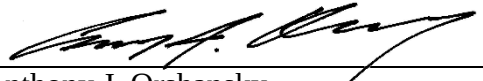
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Respectfully submitted,

DATED: November 9, 2020

COUNSELONE, PC

By 
Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

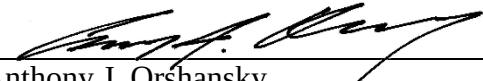
DEMAND FOR JURY TRIAL

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

Respectfully submitted,

DATED: November 9, 2020

COUNSELONE, PC

By 
Anthony J. Orshansky
Justin Kachadoorian
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees