

1 ANTHONY J. ORSHANSKY (SBN 199364)
anthony@counselonegroup.com
2 JENNIFER L. CONNOR (SBN 241480)
jennifer@counselonegroup.com
3 JUSTIN KACHADOORIAN (SBN 260356)
justin@counselonegroup.com
4 COUNSELONE, PC
9301 Wilshire Boulevard, Suite 650
5 Beverly Hills, California 90210
Telephone: (310) 277-9945
6 Facsimile: (424) 277-3727

7 Attorneys for Plaintiff Jaime Corona, on behalf of himself
and others similarly situated

COPY

8
9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN BERNARDINO

12 JAIME CORONA, on behalf of himself and
13 others similarly situated,

14 Plaintiff,

15 v.

16 FAIRVIEW FORD SALES, INC., a California
17 corporation; FAIRWAY FORD SALES, INC.,
18 a California corporation; and DOES 1 through
19 100, inclusive,

20 Defendants.

Case No. CIV SB 2124446

21 CLASS AND REPRESENTATIVE
22 ACTION COMPLAINT FOR:

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

DEMAND FOR JURY TRIAL

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

AUG 24 2021

BY MICHAEL WELCH II
MICHAEL WELCH II, DEPUTY

FAXED

Plaintiff Jaime Corona, an individual, (“Plaintiff”), on behalf of himself, the State of California, and all others similarly situated, alleges and complains of defendants Fairview Ford Sales, Inc., a California corporation; Fairway Ford Sales, Inc., a California corporation; and Does 1 through 100, inclusive (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff and the following class: *All current and former salespersons, finance managers, and service writers employed by Defendants in the State of California as non-exempt employees from August 18, 2016, and continuing to the present* (the “Class” or “Class Members”). The parties entered into a tolling agreement prior to the filing of this Complaint that extends the putative class period back to August 18, 2016.

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

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

4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees (the “Aggrieved Employees”), also brings this representative action against Defendants to recover wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain the services of counsel to file this action to protect his interests and those of Aggrieved

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 amount 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 San Bernardino County and the State of California through their acts, and by their
15 violation of the California Labor Code, California state common law, and California Business &
16 Professions Code sections 17200, *et seq.* Defendants are incorporated and headquartered in
17 California, transact business in California, and have obtained the benefits of the laws of the
18 United States and the State of California and are therefore subject to the personal jurisdiction of
19 this Court.

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

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

11. Plaintiff is informed and believes, and based thereon alleges, that Defendants are registered to do business in the State of California.

13. 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. 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.

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

8 17. California law also permits and recognizes the piercing of a corporate veil
9 between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App.
10 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 191 Cal. App. 4th 486, 512. The single enterprise
11 rule applies where “there are two or more personalities, there is but one enterprise; and that this
12 enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal.
14 App. 4th at 512.

15 18. At all times throughout their employment, Plaintiff and Employees were regularly
16 and consistently subject to the common policies and/or practices utilized by Defendants.

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

21 **IV. FACTUAL BACKGROUND**

22 **Defendants Systematically Violated State Wage and Hour Laws**

23 20. Defendants employed more than one hundred individuals in the State of California
24 during the relevant period. Defendants own and operate two automobile dealerships.

25 21. Plaintiff and Employees are nonexempt employees pursuant to the applicable
26 IWC Wage Order. This action seeks recovery for wages and compensation due and owing to
27 Plaintiff and Employees under California laws for the maximum period allowed to the present,
28 as set out herein.

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

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

14 24. By their common policy and/or practice of requiring Plaintiff and Employees to
15 work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
16 compensating them at the applicable overtime rate of pay, Defendants willfully violated the
17 provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Orders.

18 25. Plaintiff and Employees were paid based on commission pay plans that are the
19 functional equivalent of the commission pay plan that was found to be unlawful in *Vaquero v.*
20 *Stoneledge Furniture, LLC* (2017) 9 Cal. App. 5th 98. In *Stoneledge*, sales associates who worked
21 for Ashley Furniture stores were paid on a commission pay plan, which guaranteed a minimum
22 hourly rate as an advance against commissions earned in later pay periods. The *Stoneledge* court
23 held the commission pay plan was unlawful because it failed to separately compensate sales
24 associates for rest periods in weeks where the employees were paid on a commission basis.
25 Because Defendants' commission pay plans are the functional equivalent of the commission pay
26 plan in *Vaquero v. Stoneledge Furniture*, Plaintiff and Employees are owed unpaid wages for
27 rest periods for each workday in which they worked more than 3.5 hours, given Defendants'
28 failure to compensate Plaintiff and Employees separately for rest periods.

1 26. Defendants failed to fully compensate Plaintiff and Employees for “non-
2 productive” time (i.e., non-sales activity). Non-sales activity is compensable time. *See*,
3 *Stoneledge, supra*; *Balasanyan v. Nordstrom* (S.D. Cal. 2012) 913 F. Supp. 2d 1001.

4 27. Throughout the applicable period of time, Defendants did not pay and continue
5 not to pay Employees at least the California minimum wage for all hours worked, violating Labor
6 Code section 1194. Pursuant to Labor Code section 1194.2, Plaintiff and Class Members are
7 entitled to recover liquidated damages (double damages) for Defendants’ failure to pay minimum
8 wages.

9 28. Defendants failed to provide Plaintiff and Employees with timely duty-free meal
10 periods. Labor Code sections 226.7, 512, and the relevant IWC Wage Orders require employers
11 to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within
12 the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal. 4th 1004,
13 1042 (“Accordingly, first meal periods must start after no more than five hours.”). Moreover, an
14 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
15 minute uninterrupted and duty-free meal period. Labor Code § 512.

16 29. Defendants denied Plaintiff and Employees meal periods that comply with Labor
17 Code sections 226.7, 512, and the relevant IWC Wage Orders. By way of example, on numerous
18 occasions, first meal breaks were not timely provided in that Plaintiff and Employees would have
19 to work over five (5) hours without receiving a meal break. In addition, meal breaks were less
20 than thirty (30) minutes because Plaintiff and Employees were asked by Defendants and expected
21 to work during meal periods. Further, Plaintiff and Employees were not always allowed to leave
22 the workplace premises during meal periods. Plaintiff and Employees thus suffered late, short,
23 interrupted, and/or missed meal breaks. Also, despite working shifts that exceeded ten hours,
24 Plaintiff and Employees were deprived of second meal breaks.

25 30. Defendants were also obligated but failed to provide Plaintiff and Employees with
26 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
27 worked as required by Labor Code section 226.7 and the relevant IWC Wage Orders. Defendants
28 failed to provide Plaintiff and Employees with timely duty-free rest breaks.

1 31. In addition to failing to authorize and permit compliant meal and rest breaks,
2 Plaintiff and Employees were not compensated with one (1) hour's worth of pay at their regular
3 rate of compensation when they were not provided with compliant meal and rest breaks in
4 accordance with Labor Code section 226.7(b).

5 32. Plaintiff and Employees incurred necessary business expenses (e.g., purchase and
6 use of personal cell phones) in discharging their duties. However, Defendants did not pay fully,
7 or at all, for these necessary business expenses incurred by Plaintiff and Employees. Defendants
8 violated Labor Code section 2802 by failing to pay and/or indemnify Plaintiff and Employees for
9 their necessary business expenditures incurred in direct consequence of the discharge of their
10 duties.

11 33. Labor Code section 203 provides "if an employer willfully fails to pay...any
12 wages of an employee who is discharged or who quits, the wages of the employee shall continue
13 as a penalty..." for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal. App. 4th
14 487, 492.

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

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

1 Employees within seven (7) days of the close of the payroll period in accordance with Labor
2 Code section 204 on a regular and consistent basis.

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

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

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

17 39. In addition, because Defendants failed to provide the accurate and mandated
18 information on the itemized wage statements, Plaintiff and Employees have been prevented by
19 Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the
20 underpayment. Plaintiff has had to file this lawsuit and will be required to conduct discovery and
21 perform computations in order to analyze whether, and to what extent, Plaintiff and Employees
22 suffered underpayment, thereby causing Plaintiff to incur expenses and time lost.

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

26 41. Additionally, Plaintiff and Employees have been denied their legal right and
27 protected interest in having available at a central location at the plant or establishment where they
28 are employed, accurate and complete payroll records showing the hours worked daily by, and the

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, 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 salespersons, finance managers, and service writers employed by Defendants in the State of California as non-exempt employees from August 18, 2016, 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. Plaintiff is informed and believes that there are more than one hundred Class Members employed by Defendants within the State of California during the relevant period.

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 failed to pay at least the minimum wage to Class
8 Members for all hours worked;
9 c. Whether Defendants required Class Members to work over eight (8) hours
10 per day and/or over forty (40) hours per week and failed to pay the legally
11 required overtime compensation to Class Members;
12 d. Whether Defendants had a corporate policy and/or practice of failing to
13 pay Class Members for all hours worked in violation of California law;
14 e. Whether Defendants failed to separately compensate Class Members for
15 rest periods;
16 f. Whether Defendants required Class Members to perform non-sales
17 activities without compensation;
18 g. Whether Defendants deprived Class Members of legally compliant meal
19 and rest breaks;
20 h. Whether Defendants required Class Members to work during meal and/or
21 rest breaks without compensation;
22 i. Whether Defendants had a corporate policy and/or practice of failing to
23 pay Class Members premium payments for noncompliant (short, late,
24 interrupted, and/or missed altogether) meal and rest breaks in violation of
25 California law;
26 j. Whether Defendants failed to reimburse Class Members for all business-
27 related expenses;

28 ///

- 1 k. Whether Defendants complied with wage reporting as required by the
2 California Labor Code, including, *inter alia*, section 226;
- 3 l. Whether Defendants failed to timely pay all wages due to Class Members
4 during their employment;
- 5 m. Whether Defendants failed to pay all wages due to Class Members within
6 the required time upon their discharge or resignation;
- 7 n. Whether Defendants kept complete and accurate payroll records as
8 required by the California Labor Code, including, *inter alia*, section
9 1174(d);
- 10 o. Whether Defendants' conduct was willful or reckless;
- 11 p. Whether Defendants engaged in unfair business practices in violation of
12 the Unfair Competition Law, Business and Professions Code sections
13 17200, *et seq.*;
- 14 q. Whether Class Members are entitled to compensatory damages pursuant
15 to the California Labor Code;
- 16 r. The appropriate amount of damages, restitution, and/or monetary penalties
17 resulting from Defendants' violation of California law;
- 18 s. Whether Class Members are entitled to attorneys' fees and costs; and
- 19 t. Whether Class Members are entitled to interest.

20 **C. Typicality**

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

25 **D. Adequacy of Representation**

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

1 **E. Superiority of Class Action**

2 51. A class action is superior to other available means for the fair and efficient
3 adjudication of this controversy. Individual joinder of all Class Members is not practicable, and
4 questions of law and fact common to the Class predominate over any questions affecting only
5 individual members of the Class. Each member of the Class has been damaged and is entitled to
6 recovery by reason of Defendants' illegal policy or practice of failing to properly pay minimum
7 wages and/or overtime for all hours worked, failing to provide timely duty-free meal periods
8 and/or pay premiums owed thereon, failing to authorize and permit duty-free rest breaks and/or
9 pay premiums owed thereon, failing to maintain and provide accurate itemized wage statements,
10 failing to pay all wages owed in a timely manner, failing to pay all wages due upon termination
11 and/or resignation, and engaging in unfair business practices.

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

16 **FIRST CAUSE OF ACTION**

17 **FAILURE TO PAY MINIMUM WAGES**

18 **Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders**

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

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

23 54. Throughout the period of time applicable to this cause of action, Defendants did
24 not pay and continue to not pay Plaintiff and Class Members at least the California minimum
25 wage for all hours worked, thereby violating Labor Code section 1194 and the relevant IWC
26 Wage Orders. Plaintiff and Class Members performed off-the-clock work pre- and post-shift that
27 was not recorded by Defendants. Plaintiff and Class Members were also suffered to work during
28 meal periods, which time was not compensated.

1 55. Plaintiff and Class Members are owed unpaid wages for rest periods for each
2 workday in which they worked more than 3.5 hours, given Defendants' failure to compensate
3 Plaintiff and Class Members separately for rest periods.

4 56. Defendants failed to fully compensate Plaintiff and Class Members for "non-
5 productive" time (i.e., non-sales activity).

6 57. Defendants' failure to pay Plaintiff and Class Members the minimum wage as
7 required is unlawful and violates Labor Code sections 1194, 1194.2, 1197, and 1197.1. As a
8 result, Plaintiff and Class Members are entitled to recover the unpaid balance of their minimum
9 wage compensation, as well as interest, costs, and attorney's fees and liquidated damages in an
10 amount equal to the wages unlawfully unpaid and interest thereon.

11 **SECOND CAUSE OF ACTION**

12 **FAILURE TO PAY ALL OVERTIME WAGES**

13 **Cal. Labor Code §§ 510 and 1198 and the Relevant IWC Wage Orders**

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

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

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

23 60. Pursuant to the relevant IWC Wage Orders, an employee shall not be employed
24 more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek
25 unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for
26 all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any
27 workweek. Further, an employer must compensate employees at no less than twice the regular rate
28 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.

61. At all times mentioned, Plaintiff and the Class regularly worked shifts that consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours worked as a result of, but not limited to, Defendants' failure to pay for work performed off the clock, including pre- and post-shift, and during meal periods, as well as Defendants' failure to compensate Plaintiff and Class Members for "non-productive" time.

62. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) 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.

63. 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 the Relevant IWC Wage Orders

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

64. 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.

65. 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 the IWC Wage Orders require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five (5) hours of work. *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

1 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
2 minute uninterrupted and duty-free meal period. Labor Code § 512.

3 66. Despite these legal requirements, Defendants failed to provide both first and
4 second meal periods that comply with Labor Code sections 512, 226.7, and the IWC Wage
5 Orders. Plaintiff and Class Members experienced short, untimely and interrupted meal periods,
6 and on occasion, the demands of employee job duties were such that they were prevented from
7 taking a meal period altogether. Having been thus subjected to late, short, interrupted, and missed
8 meal periods, Plaintiff and Class Members did not receive their statutorily mandated meal
9 periods. Plaintiff and Class Members also would not be allowed off the workplace premises
10 during meal periods.

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

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

20 69. 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 the Relevant IWC Wage Orders**

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

26 70. 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 71. Under the applicable IWC Wage Orders, an employer must authorize and permit
2 all employees to take ten (10) minute duty free rest periods for every major fraction of four hours
3 worked. Labor Code section 226.7 provides “an employer shall not require an employee to work
4 during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
5 regulation, standard, or order of the Industrial Welfare Commission.”

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

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

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

6 74. In *Augustus*, the court expressly rejected the employer’s assertion that it could
7 provide an on-duty rest period to employees who worked as security guards and further explained
8 “that employers [must] relinquish any control over how employees spend their break time, and
9 relieve their employees of all duties.” *Id.* at 273. During breaks employers must relieve
10 employees of all duties and relinquish control over how employees spend their time.

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

14 76. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour
15 of additional of pay at their regular rates of compensation for each workday when a compliant
16 rest break was not provided, in a sum to be proven at trial.

17 **FIFTH CAUSE OF ACTION**

18 **FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 **Cal. Labor Code § 2802**

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

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

24 78. Labor Code section 2802 provides that an employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

27 79. Defendants required Plaintiff and Class Members to use their personal cell
28 phones, in order to communicate with other employees of Defendants and their customers for

1 necessary and required sales activities. These activities included but were not limited to
2 responding to customer inquiries by cell phone and text messages. Additionally, Defendants'
3 managers routinely communicated with Plaintiff and the other Class Members for business-
4 related matters by calling them on their personal cell phones and/or sending text messages to
5 their personal cell phones. These losses were incurred as a direct consequence of Plaintiff's and
6 Class Members' duties and at the direction of Defendants.

7 80. Although Plaintiff and Class Members were required to use their own personal
8 cell phones for work purposes, Plaintiff and Class Members were not provided with any
9 reimbursement for the cost and use of their personal cell phones.

10 **SIXTH CAUSE OF ACTION**

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

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

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

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

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

- 19 (1) gross wages earned;
- 20 (2) total hours worked by the employee;
- 21 (3) the number of piece-rate units earned and any applicable piece rate if the
22 employee is paid on a piece rate;
- 23 (4) all deductions, provided that all deductions made on written orders of the
24 employee may be aggregated and shown as one item;
- 25 (5) net wages earned;
- 26 (6) the inclusive dates of the period for which the employee is paid;

27 ///

28 ///

1 (7) the name of the employee and only the last four digits of his or her social
2 security number or an employee identification number other than a social
3 security number;
4 (8) the name and address of the legal entity that is the employer...; and
5 (9) all applicable hourly rates in effect during the pay period and the corresponding
6 number of hours worked at each hourly rate by the employee....

7 83. In addition to these nine different categories of information that must be included
8 on all wage statements enumerated above, pursuant to Labor Code section 226.2 Class Members’
9 itemized statements must separately state: (a) the total hours of compensable rest and recovery
10 periods, the rate of compensation, and the gross wages paid for those periods during the pay
11 period; and (b) the total hours of other non-productive time, the rate of compensation, and the
12 gross wages paid for that time during the pay period.

13 84. Defendants failed to provide itemized wage statements to Plaintiff and Class
14 Members in compliance with Labor Code §§ 226(a) and 226.2.

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

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

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

4 88. Plaintiff and Class Members are thus entitled to recover from Defendants the
5 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
6 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
7 pursuant to Labor Code section 226(e), and/or any other allowable penalties including those
8 pursuant to Labor Code section 226.3.

9 **SEVENTH CAUSE OF ACTION**

10 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

11 **AND UPON SEPARATION OF EMPLOYMENT**

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

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

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

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

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

26 92. As alleged herein and above, Defendants' failure to pay wages was willful in that
27 Defendants knew wages (e.g., for off-the-clock work, unpaid premiums) were owed to Plaintiff
28 and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours

1 of resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section
2 203, which provides that an employee's wages shall continue as a penalty until paid for a period
3 of up to thirty (30) days from the time they were due.

4 93. Labor Code section 204 requires that all wages earned by any person in any
5 employment between the 1st and 15th day, inclusive, of any calendar month, other than those
6 wages due upon termination of an employee, are due and payable between the 16th and the 26th
7 day of the month during which the labor was performed, and that all wages earned by any person
8 in any employment between the 16th and the last day, inclusive, of any calendar month, other
9 than those wages due upon termination of an employee, are due and payable between the 1st and
10 10th day of the following month. Section 204 also requires that all wages earned for labor in
11 excess of the normal work period shall be paid no later than the payday for the next regular
12 payroll period.

13 94. The requirements of Labor Code section 204 shall be deemed satisfied by the
14 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
15 than seven calendar days following the close of the payroll period when the wages were earned.

16 95. During the relevant time period, Defendants failed to pay Plaintiff and Class
17 Members all wages due to them within any time period specified by Labor Code section 204
18 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
19 rest break premiums.

20 96. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
21 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
22 imposes upon Defendants for each subsequent violation, or any willful or intentional violation,
23 of failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
24 unlawfully withheld.

25 97. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil
26 Code sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys'
27 fees and the costs incurred by them in this action, along with pre-judgment interest on all amounts
28 recovered herein, as well as any statutory penalties Defendants may owe under the California

1 Labor Code and/or any other statute.

2 **EIGHTH CAUSE OF ACTION**

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

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

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

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

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

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

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

23 **NINTH CAUSE OF ACTION**

24 **UNFAIR COMPETITION LAW VIOLATIONS**

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

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

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

1 fully set forth herein.

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

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

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

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

19 (a) Requiring Plaintiff and Class Members to work without paying them minimum
20 wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and the
21 applicable IWC Wage Orders;

22 (b) Requiring Plaintiff and Class Members to work overtime without paying them
23 proper compensation in violation of Labor Code sections 510, 1198, and the applicable IWC
24 Wage Orders;

25 (c) Failing to provide timely duty-free meal periods to Plaintiff and Class Members
26 and failing to authorize and permit duty-free rest breaks to Plaintiff and Class Members in
27 violation of Labor Code sections 226.7, 512, and the applicable IWC Wage Orders;

28 ///

1 (d) Failing to reimburse Plaintiff and Class Members for business expenses in
2 violation of Labor Code section 2802;

3 (e) 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 (f) 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 sections 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 the applicable IWC
11 Wage Orders.

12 108. 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, and failing to pay all meal and rest break premiums owed, along
16 with the corresponding interest, in a timely manner and upon separation, and while supplying
17 them inaccurate and misleading wage statements. Such conduct is substantially injurious to
18 Plaintiff and Class Members.

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

24 110. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
25 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California
26 Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing
27 of this Complaint through the date of such restitution, at rates specified by law. Defendants
28 should be required to disgorge all the profits and gains they have reaped and restore such profits

and gains to Plaintiff and Class Members, from whom they were unlawfully taken.

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

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

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

TENTH CAUSE OF ACTION

PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004

Cal. Labor Code §§ 2698, *et seq.*

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

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

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

116. Based on the above allegations incorporated by reference, Defendants have violated Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802, as well as the applicable IWC Wage Orders.

117. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code section 2699 because of Defendants' violations of Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198, and 2802,

as well as the applicable IWC Wage Orders.

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

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

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

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

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

1 numerous violations of Labor Code section 226(a).

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

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

19 122. Plaintiff has fully and completely exhausted his administrative remedies under the
20 PAGA prior to proceeding with the PAGA claim. On August 18, 2020, Plaintiff gave written
21 notice to the LWDA and by certified mail to Defendants of the specific code provisions alleged
22 to have been violated and paid the required filing fee. Plaintiff has not received notice from the
23 LWDA of its intent to investigate the alleged violations within sixty-five (65) calendar days of
24 the postmark date of the aforesaid letter. After Defendants received Plaintiff’s LWDA notice,
25 the parties entered into a tolling agreement that extended Plaintiff’s deadline to allege a PAGA
26 claim.

27 123. Plaintiff, as a personal representative of the general public, will and does seek to
28 recover any and all penalties for each and every violation shown to exist or to have occurred

1 during the one year period before Plaintiff filed notice with the LWDA of his intent to bring an
2 action, in an amount according to proof, as to those penalties that are otherwise only available to
3 public agency enforcement actions. Funds recovered will be distributed in accordance with the
4 PAGA, with 75 percent of the penalties recovered being reimbursed to the State of California
5 and the LWDA.

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

10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff prays for the following relief:

- 12 1. For an order certifying this action as a class action;
- 13 2. For compensatory damages in the amount of the unpaid minimum wage and
14 overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
- 15 3. For liquidated damages in the amount equal to the unpaid minimum wage and
16 interest thereon, as may be proven;
- 17 4. For compensatory damages in the amount of the hourly wage made by Plaintiff
18 and Class Members for each noncompliant meal period for which premium pay was not paid, as
19 may be proven;
- 20 5. For compensatory damages in the amount of the hourly wage made by Plaintiff
21 and Class Members for each day of noncompliant rest breaks for which premium pay was not
22 paid, as may be proven;
- 23 6. For reimbursement of business expenditures, as may be proven;
- 24 7. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members
25 who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as
26 may be proven;
- 27 8. For actual damages and/or penalties pursuant to Labor Code section 226(e) for
28 Plaintiff and Class Members, as may be proven;

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

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

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

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

11 13. For all civil penalties available under section 1174.5 of the Labor Code and the
12 Private Attorneys General Act of 2004;

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

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

18 16. For an award of pre-judgment and post-judgment interest;

19 17. For an award providing for the payment of the costs of this suit;

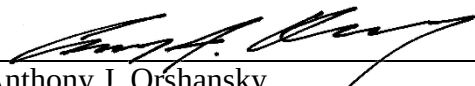
20 18. For an award of attorneys' fees, to the extent provided by law; and

21 19. For such other and further relief as the Court may deem proper and just.

22 Respectfully submitted,

23 DATED: August 19, 2021

COUNSELONE, PC

24
25 By 
26 Anthony J. Orshansky
27 Jennifer L. Connor
28 Justin Kachadoorian
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

3
4

4
5

5
6

6
77
88
9

9
10

10
11

11

12