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

JAIME ALEJANDRO FUENTES, individually,
and on behalf of all others similarly situated,

Plaintiff,

vs.

ACTRON MANUFACTURING, INC., a
California corporation; and DOES 1 through 10,
inclusive,

Defendants

Case No.: 20STCV31099

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

[Amended As of Right Pursuant to Labor
Code Section 2699.3(2)(C)]

1. Failure to Pay Minimum and Regular Rate Wages [Cal. Lab. Code §§ 204, 1194, 1194.2, and 1197];
2. Failure to Pay Overtime Compensation [Cal. Lab. Code §§ 1194 and 1198];
3. Failure to Provide Meal Periods [Cal. Lab. Code §§ 226.7, 512];
4. Failure to Authorize and Permit Rest Breaks [Cal. Lab. Code §§ 226.7];
5. Failure to Timely Pay Final Wages at Termination [Cal. Lab. Code §§ 201-203];
6. Failure to Provide Accurate Itemized Wage Statements [Cal. Lab. Code § 226]; and
7. Unfair Business Practices [Cal. Bus. & Prof. Code §§ 17200, et seq.].
8. Civil Penalties Under PAGA [Cal. Lab. Code § 2699, et seq.].

DEMAND FOR JURY TRIAL

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DEMAND FOR JURY TRIAL 27

1 Plaintiff Jaime Alejandro Fuentes ("Plaintiff"), based upon facts that either have
2 evidentiary support or are likely to have evidentiary support after a reasonable opportunity for
3 further investigation and discovery, alleges as follows:

4 **INTRODUCTION & PRELIMINARY STATEMENT**

5 1. Plaintiff brings this action against Defendants Actron Manufacturing, Inc., and
6 Does 1 through 10 (collectively referred to as "Defendants") for California Labor Code
7 violations and unfair business practices stemming from Defendants' failure to pay minimum and
8 regular rate wages, failure to pay overtime wages, failure to provide meal periods, failure to
9 authorize and permit rest periods, failure to maintain accurate records of hours worked and meal
10 periods, failure to timely pay all wages to terminated employees, and failure to furnish accurate
11 wage statements.

12 2. Plaintiff brings the First through Seventh Causes of Action individually and as a
13 class action on behalf of herself and certain current and former employees of Defendants
14 (hereinafter collectively referred to as the "Class" or "Class Members" and defined more fully
15 below). The Class consists of Plaintiff and all other persons who have been employed by any
16 Defendant in California and classified as a non-exempt employee during the statute of limitations
17 period applicable to the claims pleaded here.

18 3. Plaintiff brings the Eighth Cause of Action as a representative action under the
19 California Private Attorney General Act ("PAGA") to recover civil penalties that are owed to
20 Plaintiff, the State of California, and past and present employees of Defendants (hereinafter
21 referred to as the "Aggrieved Employees").

22 4. Defendants own/owned and operate/operated an industry, business, and
23 establishment within the State of California, including Los Angeles County. As such, and based
24 upon all the facts and circumstances incident to Defendants' business in California, Defendants
25 are subject to the California Labor Code, Wage Orders issued by the Industrial Welfare
26 Commission ("IWC"), and the California Business & Professions Code.

27 5. Despite these requirements, throughout the statutory period Defendants
28 maintained a systematic, company-wide policy and practice of:

- (a) Failing to pay employees for all hours worked, including all minimum wages, overtime wages, in compliance with the California Labor Code and IWC Wage Orders;
- (b) Failing to maintain accurate records of the hours employees worked;
- (c) Failing to provide employees with timely and duty-free meal periods in compliance with the California Labor Code and IWC Wage Orders, failing to maintain accurate records of all meal periods taken or missed, and failing to pay an additional hour's pay for each workday a meal period violation occurred;
- (d) Failing to authorize and permit employees to take timely and duty-free rest periods in compliance with the California Labor Code and IWC Wage Orders, and failing to pay an additional hour's pay for each workday a rest period violation occurred;
- (e) Willfully failing to pay employees all minimum wages, overtime wages, meal period premium wages, and rest period premium wages due within the time period specified by California law when employment terminates; and
- (f) Failing to provide employees with accurate, itemized wage statements containing all the information required by the California Labor Code and IWC Wage Orders.

6. On information and belief, Defendants, and each of them were on actual and constructive notice of the improprieties alleged herein and intentionally refused to rectify their unlawful policies. Defendants' violations, as alleged above, during all relevant times herein were willful and deliberate.

7. At all relevant times, Defendants were and are legally responsible for all of the unlawful conduct, policies, practices, acts and omissions as described in each and all of the foregoing paragraphs as the employer of Plaintiff and the Class. Further, Defendants are

1 responsible for each of the unlawful acts or omissions complained of herein under the doctrine of
2 “respondeat superior”.

3 **THE PARTIES**

4 **A. Plaintiff**

5 8. Plaintiff is a California resident who worked for Defendants in Los Angeles
6 County, California as a material handler from approximately October 2018 to March 2020.

7 9. Plaintiff reserves the right to seek leave to amend this complaint to add new
8 plaintiffs, if necessary, in order to establish suitable representative(s) pursuant to *La Sala v.*
9 *American Savings and Loan Association* (1971) 5 Cal.3d 864, 872, and other applicable law.

10 **B. Defendants**

11 10. Plaintiff is informed and believes, and based upon that information and belief
12 alleges, that Defendant Actron Manufacturing, Inc. is:

13 (a) A California corporation with its principal places of business in Los
14 Angeles, California.

15 (b) A business entity conducting business in numerous counties throughout the
16 State of California, including in Los Angeles County; and

17 (c) The former employer of Plaintiffs, and the current and/or former employer
18 of the putative Class. Actron Manufacturing, Inc. suffered and permitted
19 Plaintiffs and the Class to work, and/or controlled their wages, hours, or
20 working conditions.

21 11. Plaintiff does not know the true names or capacities of the persons or entities sued
22 herein as Does 1-10, inclusive, and therefore sues said Defendants by such fictitious names.
23 Each of the Doe Defendants was in some manner legally responsible for the damages suffered by
24 Plaintiff and the Class as alleged herein. Plaintiff will amend this complaint to set forth the true
25 names and capacities of these Defendants when they have been ascertained, together with
26 appropriate charging allegations, as may be necessary.
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1 12. At all times mentioned herein, the Defendants named as Does 1-10, inclusive, and
2 each of them, were residents of, doing business in, availed themselves of the jurisdiction of,
3 and/or injured a significant number of the Plaintiff and the Class in the State of California.

4 13. Plaintiff is informed and believes and thereon alleges that at all relevant times
5 each Defendant, directly or indirectly, or through agents or other persons, employed Plaintiff and
6 the other employees described in the class definitions below, and exercised control over their
7 wages, hours, and working conditions. Plaintiff is informed and believes and thereon alleges
8 that, at all relevant times, each Defendant was the principal, agent, partner, joint venturer, officer,
9 director, controlling shareholder, subsidiary, affiliate, parent corporation, successor in interest
10 and/or predecessor in interest of some or all of the other Defendants, and was engaged with some
11 or all of the other Defendants in a joint enterprise for profit, and bore such other relationships to
12 some or all of the other Defendants so as to be liable for their conduct with respect to the matters
13 alleged below. Plaintiff is informed and believes and thereon alleges that each Defendant acted
14 pursuant to and within the scope of the relationships alleged above, that each Defendant knew or
15 should have known about, and authorized, ratified, adopted, approved, controlled, aided and
16 abetted the conduct of all other Defendants.

17 **ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

18 14. Plaintiff Jaime Alejandro Fuentes worked for Defendants in Los Angeles County,
19 California as a material handler from approximately October 2018 to March 2020. At all times
20 Defendants classified Plaintiff as non-exempt from California's overtime requirements. During
21 the statutory time period, Plaintiff was typically scheduled to work at least 5 days in a workweek,
22 and typically in excess of 8 hours in a single workday.

23 15. Throughout the statutory period, Defendants failed to pay Plaintiff for all hours
24 worked (including minimum wages and overtime compensation), failed to provide Plaintiff with
25 uninterrupted meal periods, failed to authorize and permit Plaintiff to take uninterrupted rest
26 periods, failed to maintain accurate records of the hours Plaintiff worked, failed to timely pay all
27 final wages to Plaintiff when Defendants terminated Plaintiff's employment, and failed to furnish
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1 accurate wage statements to Plaintiff. As discussed below, Plaintiff's experience working for
2 Defendants was typical and illustrative.

3 16. Throughout the statutory period, Defendants maintained a policy and practice of
4 not paying Plaintiff and the Class for all hours worked, including all overtime wages. Defendants
5 regularly use a system of time rounding in a manner that resulted, over a period of time, in failing
6 to compensate Plaintiff and the Class properly for all the time they have actually worked, even
7 though the realities of Defendants' operations are such that it is possible, practical, and feasible
8 to count and pay for work time to the minute. Also, Plaintiff and the Class were typically
9 required to work "off the clock". For example, Plaintiff and the Class were required to wait in
10 line in order to clock into work each workday, uncompensated. Also throughout the statutory
11 period, Defendants maintained a policy and practice of failing to pay Plaintiff and the Class the
12 correct amount of overtime pay in compliance with California law. For example, Plaintiff and
13 the Class earned non-discretionary bonuses, but Defendants failed to include these non-
14 discretionary bonuses when calculating the regular rate of pay for overtime purposes. As a
15 result, Defendants frequently paid Plaintiff and the Class less than all their work time, some of
16 which should have been paid at the overtime rate. As a further result, Defendants failed to
17 maintain accurate records of the hours Plaintiff and the Class worked.

18 17. Throughout the statutory period, Defendants have wrongfully failed to provide
19 Plaintiff and the Class with legally compliant meal periods. Defendants regularly, but not
20 always, required Plaintiff and the Class to work in excess of five consecutive hours a day without
21 providing a 30-minute, continuous and uninterrupted, duty-free meal period for every five hours
22 of work, or without compensating Plaintiff and the Class for meal periods that were not provided
23 by the end of the fifth hour of work or tenth hour of work. Defendants did not adequately inform
24 Plaintiff and the Class of their right to take a meal period by the end of the fifth hour of work, or,
25 for shifts greater than 10 hours, by the end of the tenth hour of work. Defendants also did not
26 have adequate policies or practices to document and verify whether Plaintiff and the Class were
27 taking their required meal periods. Accordingly, Defendants' policy and practice was to not
28 provide meal periods to Plaintiff and the Class in compliance with California law.

1 18. Throughout the statutory period, Defendants have wrongfully failed to authorize
2 and permit Plaintiff and the Class to take timely and duty-free rest periods. Defendants regularly,
3 but not always, required Plaintiff and the Class to work in excess of four consecutive hours a day
4 without Defendants authorizing and permitting them to take a 10-minute, continuous and
5 uninterrupted, rest period for every four hours of work (or major fraction of four hours), or
6 without compensating Plaintiff and the Class for rest periods that were not authorized or
7 permitted. Further, Plaintiff and the Class were not authorized to take a third rest period in those
8 instances where they worked in excess of 10 hours per workday. Accordingly, Defendants'
9 policy and practice was to not authorize and permit Plaintiff and the Class to take rest periods in
10 compliance with California law.

11 19. Throughout the statutory period, Defendants willfully failed and refused to timely
12 pay Plaintiff and the Class at the conclusion of their employment all wages, including overtime
13 wages, meal period premium wages, and rest period premium wages.

14 20. Throughout the statutory period, Defendants failed to provide adequate and suitable
15 seating to its employees, despite the fact that seating was possible for its employees throughout
16 the workday.

17 21. Throughout the statutory period, Defendants failed to furnish Plaintiff and the
18 Class with accurate, itemized wage statements showing all applicable hourly rates, and all gross
19 and net wages earned (including correct hours worked, correct wages earned for hours worked,
20 correct overtime hours worked, correct wages for meal periods that were not provided in
21 accordance with California law, and correct wages for rest periods that were not authorized and
22 permitted to take in accordance with California law). As a result of these violations of California
23 Labor Code § 226(a), Plaintiff and the Class suffered injury because, among other things:

- 24 (a) the violations led them to believe that they were not entitled to be paid
25 minimum wages, overtime wages, meal period premium wages, and rest
26 period premium wages to which they were entitled, even though they were
27 entitled;

- 1 (b) the violations led them to believe that they had been paid the minimum,
2 overtime, meal period premium, and rest period premium wages to which
3 they were entitled, even though they had not been;
- 4 (c) the violations led them to believe they were not entitled to be paid
5 minimum, overtime, meal period premium, and rest period premium wages
6 at the correct California rate even though they were;
- 7 (d) the violations led them to believe they had been paid minimum, overtime,
8 meal period premium, and rest period premium wages at the correct
9 California rate even though they had not been;
- 10 (e) the violations hindered them from determining the amounts of minimum,
11 overtime, meal period premium, and rest period premium owed to them;
- 12 (f) in connection with their employment before and during this action, and in
13 connection with prosecuting this action, the violations caused them to have
14 to perform mathematical computations to determine the amounts of wages
15 owed to them, computations they would not have to make if the wage
16 statements contained the required accurate information;
- 17 (g) by understating the wages truly due them, the violations caused them to
18 lose entitlement and/or accrual of the full amount of Social Security,
19 disability, unemployment, and other governmental benefits;
- 20 (h) the wage statements inaccurately understated the wages, hours, and wage
21 rates to which Plaintiff and the Class were entitled, and Plaintiff and the
22 Class were paid less than the wages and wage rates to which they were
23 entitled.

24 Thus, Plaintiff and the Class are owed the amounts provided for in California Labor Code §
25 226(e).
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1 herein. Plaintiff has no conflicts with or interests antagonistic to any Class
2 Member. Plaintiff's attorneys, the proposed class counsel, are versed in
3 the rules governing class action discovery, certification, and settlement.
4 Plaintiff has incurred, and throughout the duration of this action, will
5 continue to incur costs and attorneys' fees that have been, are, and will be
6 necessarily expended for the prosecution of this action for the substantial
7 benefit of each class member.

8 (d) Superiority: A Class Action is superior to other available methods for the
9 fair and efficient adjudication of the controversy, including consideration
10 of:

- 11 1) The interests of the members of the Class in individually
12 controlling the prosecution or defense of separate actions;
- 13 2) The extent and nature of any litigation concerning the controversy
14 already commenced by or against members of the Class;
- 15 3) The desirability or undesirability of concentrating the litigation of
16 the claims in the particular forum; and
- 17 4) The difficulties likely to be encountered in the management of a
18 class action.

19 (e) Public Policy Considerations: The public policy of the State of California
20 is to resolve the California Labor Code claims of many employees through
21 a class action. Indeed, current employees are often afraid to assert their
22 rights out of fear of direct or indirect retaliation. Former employees are
23 also fearful of bringing actions because they believe their former
24 employers might damage their future endeavors through negative
25 references and/or other means. Class actions provide the class members
26 who are not named in the complaint with a type of anonymity that allows
27 for the vindication of their rights at the same time as their privacy is
28 protected.

1 28. There are common questions of law and fact as to the Class (and each subclass, if
2 any) that predominate over questions affecting only individual members, including without
3 limitation, whether, as alleged herein, Defendants have:

- 4 (a) Failed to pay Class Members for all hours worked, including minimum
5 wages, and overtime wages;
- 6 (b) Failed to provide meal periods and pay meal period premium wages to
7 Class Members;
- 8 (c) Failed to authorize and permit rest periods and pay rest period premium
9 wages to Class Members;
- 10 (d) Failed to promptly pay all wages due to Class Members upon their
11 discharge or resignation;
- 12 (e) Failed to provide Class Members with accurate wages statements;
- 13 (f) Failed to maintain accurate records of all hours Class Members worked,
14 and all meal periods Class Members took or missed; and
- 15 (g) Violated California Business & Professions Code §§ 17200 *et. seq.* as a
16 result of their illegal conduct as described above.

17 29. This Court should permit this action to be maintained as a class action pursuant to
18 California Code of Civil Procedure § 382 because:

- 19 (a) The questions of law and fact common to the Class predominate over any
20 question affecting only individual members;
- 21 (b) A class action is superior to any other available method for the fair and
22 efficient adjudication of the claims of the members of the Class;
- 23 (c) The members of the Class are so numerous that it is impractical to bring all
24 members of the class before the Court;
- 25 (d) Plaintiff, and the other members of the Class, will not be able to obtain
26 effective and economic legal redress unless the action is maintained as a
27 class action;
- 28 (e) There is a community of interest in obtaining appropriate legal and

1 equitable relief for the statutory violations, and in obtaining adequate
2 compensation for the damages and injuries for which Defendants are
3 responsible in an amount sufficient to adequately compensate the members
4 of the Class for the injuries sustained;

5 (f) Without class certification, the prosecution of separate actions by
6 individual members of the class would create a risk of:

- 7 1) Inconsistent or varying adjudications with respect to individual
8 members of the Class which would establish incompatible standards
9 of conduct for Defendants; and/or
10 2) Adjudications with respect to the individual members which would,
11 as a practical matter, be dispositive of the interests of other
12 members not parties to the adjudications, or would substantially
13 impair or impede their ability to protect their interests, including but
14 not limited to the potential for exhausting the funds available from
15 those parties who are, or may be, responsible Defendants; and,

16 (g) Defendants have acted or refused to act on grounds generally applicable to
17 the Class, thereby making final injunctive relief appropriate with respect to
18 the class as a whole.

19 30. Plaintiff contemplates the eventual issuance of notice to the proposed members of
20 the Class that would set forth the subject and nature of the instant action. The Defendants' own
21 business records may be utilized for assistance in the preparation and issuance of the
22 contemplated notices. To the extent that any further notices may be required, Plaintiff would
23 contemplate the use of additional techniques and forms commonly used in class actions, such as
24 published notice, e-mail notice, website notice, first-class mail, or combinations thereof, or by
25 other methods suitable to the Class and deemed necessary and/or appropriate by the Court.

26 **FIRST CAUSE OF ACTION**

27 **(Against all Defendants for Failure to Pay Minimum Wages for All Hours Worked)**
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1 31. Plaintiff incorporates by reference and re-alleges as if fully stated herein
2 paragraphs 1 through 21 in this First Amended Complaint.

3 32. "Hours worked" is the time during which an employee is subject to the control of
4 an employer, and includes all the time the employee is suffered or permitted to work, whether or
5 not required to do so.

6 33. At all relevant times herein mentioned, Defendants knowingly failed to pay to
7 Plaintiff and the Class compensation for all hours they worked. By their failure to pay
8 compensation for each hour worked as alleged above, Defendants willfully violated the
9 provisions of Section 1194 of the California Labor Code, and any additional applicable Wage
10 Orders, which require such compensation to non-exempt employees.

11 34. Accordingly, Plaintiff and the Class are entitled to recover minimum wages for all
12 non-overtime hours worked for Defendants.

13 35. By and through the conduct described above, Plaintiff and the Class have been
14 deprived of their rights to be paid wages earned by virtue of their employment with Defendants.

15 36. By virtue of the Defendants' unlawful failure to pay additional compensation to
16 Plaintiff and the Class for their non-overtime hours worked without pay, Plaintiff and the Class
17 suffered, and will continue to suffer, damages in amounts which are presently unknown to
18 Plaintiff and the Class, but which exceed the jurisdictional minimum of this Court, and which
19 will be ascertained according to proof at trial.

20 37. By failing to keep adequate time records required by California Labor Code §
21 1174(d), Defendants have made it difficult to calculate the full extent of minimum wage
22 compensation due Plaintiff and the Class.

23 38. Pursuant to California Labor Code section 1194.2, Plaintiff and the Class are
24 entitled to recover liquidated damages (double damages) for Defendants' failure to pay minimum
25 wages.

26 39. California Labor Code section 204 requires employers to provide employees with
27 all wages due and payable twice a month. Throughout the statute of limitations period applicable
28 to this cause of action, Plaintiff and the Class were entitled to be paid twice a month at rates

1 required by law, including minimum wages. However, during all such times, Defendants
2 systematically failed and refused to pay Plaintiff and the Class all such wages due, and failed to
3 pay those wages twice a month.

4 40. Plaintiff and the Class are also entitled to seek recovery of all unpaid minimum
5 wages, interest, and reasonable attorneys' fees and costs pursuant to California Labor Code §§
6 218.5, 218.6, and 1194(a).

7 **SECOND CAUSE OF ACTION**

8 **(Against all Defendants for Failure to Pay Overtime Wages)**

9 41. Plaintiff incorporates by reference and re-alleges as if fully stated herein
10 paragraphs 1 through 21 in this First Amended Complaint.

11 42. California Labor Code § 510 provides that employees in California shall not be
12 employed more than eight (8) hours in any workday or forty (40) hours in a workweek unless
13 they receive additional compensation beyond their regular wages in amounts specified by law.

14 43. California Labor Code §§ 1194 and 1198 provide that employees in California
15 shall not be employed more than eight hours in any workday unless they receive additional
16 compensation beyond their regular wages in amounts specified by law. Additionally, California
17 Labor Code § 1198 states that the employment of an employee for longer hours than those fixed
18 by the Industrial Welfare Commission is unlawful.

19 44. At all times relevant hereto, Plaintiff and the Class have worked more than eight
20 hours in a workday, as employees of Defendants.

21 45. At all times relevant hereto, Defendants failed to pay Plaintiff and the Class
22 overtime compensation for the hours they have worked in excess of the maximum hours
23 permissible by law as required by California Labor Code § 510 and 1198. Plaintiff and the Class
24 are regularly required to work overtime hours.

25 46. By virtue of Defendants' unlawful failure to pay additional premium rate
26 compensation to the Plaintiff and the Class for their overtime hours worked, Plaintiff and the
27 Class have suffered, and will continue to suffer, damages in amounts which are presently
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1 unknown to them but which exceed the jurisdictional minimum of this Court and which will be
2 ascertained according to proof at trial.

3 47. By failing to keep adequate time records required by Labor Code § 1174(d),
4 Defendants have made it difficult to calculate the full extent of overtime compensation due to
5 Plaintiff and the Class.

6 48. Plaintiff and the Class also request recovery of overtime compensation according
7 to proof, interest, attorneys' fees and costs pursuant to California Labor Code § 1194(a), as well
8 as the assessment of any statutory penalties against Defendants, in a sum as provided by the
9 California Labor Code and/or other statutes.

10 49. California Labor Code § 204 requires employers to provide employees with all
11 wages due and payable twice a month. The Wage Orders also provide that every employer shall
12 pay to each employee, on the established payday for the period involved, overtime wages for all
13 overtime hours worked in the payroll period. Defendants failed to provide Plaintiff and the Class
14 with all compensation due, in violation of California Labor Code § 204.

15 **THIRD CAUSE OF ACTION**

16 **(Against All Defendants for Failure to Provide Meal Periods)**

17 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein
18 paragraphs 1 through 21 in this First Amended Complaint.

19 51. Under California law, Defendants have an affirmative obligation to relieve the
20 Plaintiff and the Class of all duty in order to take their first daily meal periods no later than the
21 start of Plaintiff and the Class' sixth hour of work in a workday, and to take their second meal
22 periods no later than the start of the eleventh hour of work in the workday. Section 512 of the
23 California Labor Code, and Section 11 of the applicable Wage Orders require that an employer
24 provide unpaid meal periods of at least 30 minutes for each five-hour period worked. It is a
25 violation of Section 226.7 of the California Labor Code for an employer to require any employee
26 to work during any meal period mandated under any Wage Order.

27 52. Despite these legal requirements, Defendants regularly failed to provide
28 Plaintiff and the Class with both meal periods as required by California law. By their failure to

1 permit and authorize Plaintiff and the Class to take all meal periods as alleged above (or due to
2 the fact that Defendants made it impossible or impracticable to take these uninterrupted meal
3 periods), Defendants willfully violated the provisions of Section 226.7 of the California Labor
4 Code and the applicable Wage Orders.

5 53. Under California law, Plaintiff and the Class are entitled to be paid one hour of
6 additional wages for each workday he or she was not provided with all required meal period(s),
7 plus interest thereon.

8 **FOURTH CAUSE OF ACTION**

9 **(Against All Defendants for Failure to Authorize and Permit Rest Periods)**

10 54. Plaintiff incorporates by reference and re-alleges as if fully stated herein
11 paragraphs 1 through 21 in this First Amended Complaint.

12 55. Defendants are required by California law to authorize and permit breaks of 10
13 uninterrupted minutes for each four hours of work or major fraction of four hours (i.e. more than
14 two hours). Section 512 of the California Labor Code, the applicable Wage Orders require that
15 the employer permit and authorize all employees to take paid rest periods of 10 minutes each for
16 each 4-hour period worked. Thus, for example, if an employee's work time is 6 hours and ten
17 minutes, the employee is entitled to two rest breaks. Each failure to authorize rest breaks as so
18 required is itself a violation of California's rest break laws. It is a violation of Section 226.7 of
19 the California Labor Code for an employer to require any employee to work during any rest
20 period mandated under any Wage Order.

21 56. Despite these legal requirements, Defendants failed to authorize Plaintiff and the
22 Class to take rest breaks, regardless of whether employees worked more than 4 hours in a
23 workday. By their failure to permit and authorize Plaintiff and the Class to take rest periods as
24 alleged above (or due to the fact that Defendants made it impossible or impracticable to take
25 these uninterrupted rest periods), Defendants willfully violated the provisions of Section 226.7 of
26 the California Labor Code and the applicable Wage Orders.

57. Under California law, Plaintiff and the Class are entitled to be paid one hour of premium wages rate for each workday he or she was not provided with all required rest break(s), plus interest thereon.

FIFTH CAUSE OF ACTION

(Against all Defendants for Failure to Pay Wages of Discharged Employees – Waiting Time Penalties)

58. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this First Amended Complaint.

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

60. Within the applicable statute of limitations, the employment of Plaintiff and many other members of the Class ended, i.e. was terminated by quitting or discharge, and the employment of others will be. However, during the relevant time period, Defendants failed, and continue to fail to pay terminated Class Members, without abatement, all wages required to be paid by California Labor Code sections 201 and 202 either at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

61. Defendants' failure to pay Plaintiff and those Class members who are no longer employed by Defendants their wages earned and unpaid at the time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ, is in violation of California Labor Code §§ 201 and 202.

62. California Labor Code § 203 provides that if an employer willfully fails to pay wages owed, in accordance with sections 201 and 202, then the wages of the employee shall continue as a penalty wage from the due date, and at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

63. Plaintiff and the Class are entitled to recover from Defendants their additionally accruing wages for each day they were not paid, at their regular hourly rate of pay, up to 30 days maximum pursuant to California Labor Code § 203.

64. Pursuant to California Labor Code §§ 218.5, 218.6 and 1194, Plaintiff and the Class are also entitled to an award of reasonable attorneys' fees, interest, expenses, and costs incurred in this action.

SIXTH CAUSE OF ACTION

(Against all Defendants for Failure to Provide and Maintain Accurate and Compliant Wage Records)

65. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this First Amended Complaint.

66. At all material times set forth herein, California Labor Code § 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized wage statement in writing showing nine pieces of information, including: (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

67. Defendants have intentionally and willfully failed to provide employees with complete and accurate wage statements. The deficiencies include, among other things, the failure to correctly identify the gross wages earned by Plaintiff and the Class, the failure to list the true “total hours worked by the employee,” and the failure to list the true net wages earned.

68. As a result of Defendants' violation of California Labor Code § 226(a), Plaintiff and the Class have suffered injury and damage to their statutorily-protected rights.

69. Specifically, Plaintiff and the members of the Class have been injured by Defendants' intentional violation of California Labor Code § 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate, itemized wage statements under California Labor Code § 226(a).

70. Calculation of the true wage entitlement for Plaintiff and the Class is difficult and time consuming. As a result of this unlawful burden, Plaintiff and the Class were also injured as a result of having to bring this action to attempt to obtain correct wage information following Defendants' refusal to comply with many of the mandates of California's Labor Code and related laws and regulations.

71. Plaintiff and the Class are entitled to recover from Defendants the greater of their actual damages caused by Defendants' failure to comply with California Labor Code § 226(a), or an aggregate penalty not exceeding four thousand dollars per employee.

72. Plaintiff and the Class are also entitled to injunctive relief, as well as an award of attorney's fees and costs to ensure compliance with this section, pursuant to California Labor Code § 226(h).

SEVENTH CAUSE OF ACTION

**(Against all Defendants for Violation of California Business & Professions Code §§ 17200,
et seq.)**

73. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this First Amended Complaint.

74. Defendants, and each of them, are “persons” as defined under California Business & Professions Code § 17201.

75. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful, and harmful to Plaintiff, other Class members, and to the general public. Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure § 1021.5.

1 76. Defendants' activities, as alleged herein, are violations of California law, and
2 constitute unlawful business acts and practices in violation of California Business & Professions
3 Code §§ 17200, *et seq.*

4 77. A violation of California Business & Professions Code §§ 17200, *et seq.* may be
5 predicated on the violation of any state or federal law. All of the acts described herein as
6 violations of, among other things, the California Labor Code, are unlawful and in violation of
7 public policy; and in addition are immoral, unethical, oppressive, fraudulent and unscrupulous,
8 and thereby constitute unfair, unlawful and/or fraudulent business practices in violation of
9 California Business & Professions Code §§ 17200, *et seq.*

10 **Failure to Pay Minimum Wages**

11 78. Defendants' failure to pay minimum wages, and other benefits in violation of the
12 California Labor Code constitutes unlawful and/or unfair activity prohibited by California
13 Business & Professions Code §§ 17200, *et seq.*

14 **Failure to Pay Overtime Wages**

15 79. Defendants' failure to pay overtime compensation and other benefits in violation
16 of California Labor Code §§ 510, 1194, and 1198 constitutes unlawful and/or unfair activity
17 prohibited by California Business & Professions Code §§ 17200, *et seq.*

18 **Failure to Maintain Accurate Records of All Hours Worked**

19 80. Defendants' failure to maintain accurate records of all hours worked in accordance
20 with California Labor Code § 1174.5 and the IWC Wage Orders constitutes unlawful and/or
21 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

22 **Failure to Provide Meal Periods**

23 81. Defendants' failure to provide meal periods in accordance with California Labor
24 Code §§ 226.7 and 512, and the IWC Wage Orders, as alleged above, constitutes unlawful and/or
25 unfair activity prohibited by California Business & Professions Code §§ 17200, *et seq.*

26 **Failure to Maintain Accurate Records of Meal Periods**

27 82. Defendants' failure to maintain accurate records of employee meal periods in
28 accordance with California Labor Code § 226.7 and the IWC Wage Orders, as alleged above,

1 constitutes unlawful and/or unfair activity prohibited by California Business & Professions Code
2 §§ 17200, *et seq.*

3 **Failure to Authorize and Permit Rest Periods**

4 83. Defendants' failure to authorize and permit rest periods in accordance with
5 California Labor Code § 226.7 and the IWC Wage Orders, as alleged above, constitutes unlawful
6 and/or unfair activity prohibited by Business and Professions Code §§ 17200, *et seq.*

7 **Failure to Provide Accurate Itemized Wage Statements**

8 84. Defendants' failure to provide accurate itemized wage statements in accordance
9 with California Labor Code § 226, as alleged above, constitutes unlawful and/or unfair activity
10 prohibited by California Business & Professions Code §§ 17200, *et seq.*

11 85. By and through their unfair, unlawful and/or fraudulent business practices
12 described herein, the Defendants, have obtained valuable property, money and services from
13 Plaintiff, and all persons similarly situated, and have deprived Plaintiff, and all persons similarly
14 situated, of valuable rights and benefits guaranteed by law, all to their detriment.

15 86. Plaintiff and the Class Members suffered monetary injury as a direct result of
16 Defendants' wrongful conduct.

17 87. Plaintiff, individually, and on behalf of members of the putative Class, are entitled
18 to, and do, seek such relief as may be necessary to disgorge money and/or property which the
19 Defendants have wrongfully acquired, or of which Plaintiff and the Class have been deprived, by
20 means of the above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and
21 the Class are not obligated to establish individual knowledge of the wrongful practices of
22 Defendants in order to recover restitution.

23 88. Plaintiff, individually, and on behalf of members of the putative class, are further
24 entitled to and do seek a declaration that the above described business practices are unfair,
25 unlawful and/or fraudulent, and injunctive relief restraining the Defendants, and each of them,
26 from engaging in any of the above-described unfair, unlawful and/or fraudulent business
27 practices in the future.
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89. Plaintiff, individually, and on behalf of members of the putative class, have no plain, speedy, and/or adequate remedy at law to redress the injuries which the Class Members suffered as a consequence of the Defendants' unfair, unlawful and/or fraudulent business practices. As a result of the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually, and on behalf of members of the putative Class, suffered and will continue to suffer irreparable harm unless the Defendants, and each of them, are restrained from continuing to engage in said unfair, unlawful and/or fraudulent business practices.

90. Plaintiff also alleges that if Defendants are not enjoined from the conduct set forth herein above, they will continue to avoid paying the appropriate taxes, insurance and other withholdings.

91. Pursuant to California Business & Professions Code §§ 17200, *et seq.*, Plaintiff and putative Class Members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of this complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and Class Members; an award of attorneys' fees pursuant to California Code of Civil Procedure § 1021.5 and other applicable laws; and an award of costs.

EIGHTH CAUSE OF ACTION

(Against all Defendants for Civil Penalties Under the Private Attorneys General Act of 2004, Cal. Lab. Code § 2698 et seq.)

92. Plaintiff incorporates by reference and re-alleges as if fully stated herein paragraphs 1 through 21 in this First Amended Complaint.

93. At all times herein mentioned, Defendants were subject to the Labor Code of the State of California and the applicable Industrial Welfare Commission Orders.

94. California Labor Code § 2699(a) specifically provides for a private right of action to recover penalties for violations of the Labor Code: “Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative,

1 be recovered through a civil action brought by an aggrieved employee on behalf of himself or
2 herself and other current or former employees pursuant to the procedures specified in Section
3 2699.3.”

4 95. Plaintiff has exhausted her administrative remedies pursuant to California Labor
5 Code § 2699.3. On August 12, 2020, Plaintiff gave written notice by online filing to the Labor
6 and Workforce Development Agency and by certified mail to Defendants of the specific
7 provisions of the Labor Code that Defendants have violated against Plaintiff and current and
8 former aggrieved employees, including the facts and theories to support the violations.
9 Plaintiff’s PAGA case numbers is Case No. LWDA- CM-802364-20. At the time of this filing,
10 65 days has elapsed since Plaintiff provided notice, but the Labor and Workforce Development
11 Agency has not indicated that it intends to investigate Defendants’ Labor Code violations
12 discussed in the notice. Accordingly, Plaintiff may commence a civil action to recover penalties
13 under Labor Code § 2699 pursuant to § 2699.3 for the violations of the Labor Code described in
14 this Complaint. These penalties include, but are not limited to, penalties under California Labor
15 Code §§ 210, 226.3, 558, 1197.1, and 2699(f)(2).

16 96. In addition, Plaintiff seeks penalties for Defendants’ violation of California Labor
17 Code § 1174(d). Pursuant to California Labor Code § 1174.5, any person, including any entity,
18 employing labor who willfully fails to maintain accurate and complete records required by
19 California Labor Code § 1174 is subject to a penalty under § 1174.5. Pursuant to the applicable
20 IWC Order § 7(A)(3), every employer shall keep time records showing when the employee
21 begins and ends each work period. Meal periods, and total hours worked daily shall also be
22 recorded. Additionally, pursuant to the applicable IWC Order § 7(A)(5), every employer shall
23 keep total hours worked in the payroll period and applicable rates of pay.

24 97. During the time period of employment for Plaintiff and the Aggrieved Employees,
25 Defendants failed to maintain records pursuant to the Labor Code and IWC Orders by failing to
26 maintain accurate records showing meal periods, and accurate records showing when employees
27 begin and end each work period. Defendants’ failure to provide and maintain records required by
28 the Labor Code IWC Wage Orders deprived Plaintiff and the Aggrieved Employees the ability to

1 know, understand and question the accuracy and frequency of meal periods, and the accuracy of
2 their hours worked stated in Defendants' records. Therefore, Plaintiff and the Aggrieved
3 Employees had no way to dispute the resulting failure to pay wages, all of which resulted in an
4 unjustified economic enrichment to Defendants. As a direct result, Plaintiff and the Aggrieved
5 Employees have suffered and continue to suffer, substantial losses related to the use and
6 enjoyment of such wages, lost interest on such wages and expenses and attorney's fees in seeking
7 to compel Defendants to fully perform its obligation under state law, all to their respective
8 damage in amounts according to proof at trial. Because of Defendants' knowing failure to
9 comply with the Labor Code and applicable IWC Wage Orders, Plaintiff and the Aggrieved
10 Employees have also suffered an injury in that they were prevented from knowing,
11 understanding, and disputing the wage payments paid to them.

12 98. Based on the conduct described in this First Amended Complaint, Plaintiff is
13 entitled to an award of civil penalties on behalf of herself self, the State of California, and
14 similarly Aggrieved Employees of Defendants. The exact amount of the applicable penalties, in
15 all, is in an amount to be shown according to proof at trial. These penalties are in addition to all
16 other remedies permitted by law.

17 99. In addition, Plaintiff seeks an award of reasonable attorney's fees and costs
18 pursuant to California Labor Code § 2699(g)(1), which states, "Any employee who prevails in
19 any action shall be entitled to an award of reasonable attorney's fees and costs."

20 **PRAYER FOR RELIEF**

21 Plaintiff, individually, and on behalf of all others similarly situated only with respect to
22 the class claims, pray for relief and judgment against Defendants, jointly and severally, as
23 follows:

24 **Class Certification**

- 25 1. That this action be certified as a class action with respect to the First, Second,
26 Third, Fourth, Fifth, Sixth, and Eighth Causes of Action;
27 2. That Plaintiff be appointed as the representative of the Class; and
28 3. That counsel for Plaintiff be appointed as Class Counsel.

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4. That the Court declare, adjudge and decree that Defendants violated California Code §§ 204 and 1194 and applicable IWC Wage Orders by willfully failing to pay all minimum wages due;
5. For general unpaid wages as may be appropriate;
6. For pre-judgment interest on any unpaid compensation commencing from the date amounts were due;
7. For liquidated damages;
8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
9. For such other and further relief as the Court may deem equitable and appropriate.

6. For pre-judgment interest on any unpaid compensation commencing from the date amounts were due;

8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,

9. For such other and further relief as the Court may deem equitable and appropriate.

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10. That the Court declare, adjudge and decree that Defendants violated California Labor Code §§ 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all wages due;
11. For general unpaid wages at overtime wage rates as may be appropriate;
12. For pre-judgment interest on any unpaid overtime compensation commencing on the date such amounts were due;
13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to California Labor Code § 1194(a); and,
14. For such other and further relief as the Court may deem equitable and appropriate.

12. For pre-judgment interest on any unpaid overtime compensation commencing
the date such amounts were due;

13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
 14. _____, California Labor Code § 1194(a); and,

14. For such other and further relief as the Court may deem equitable and appropriate.

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15. That the Court declare, adjudge and decree that Defendants violated California Code §§ 226.7 and 512, and the IWC Wage Orders;
16. For unpaid meal period premium wages as may be appropriate;
17. For pre-judgment interest on any unpaid compensation commencing from the date amounts were due;

17. For pre-judgment interest on any unpaid compensation commencing from the date amounts were due;

1 18. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
2 and for costs of suit incurred herein; and

3 19. For such other and further relief as the Court may deem equitable and appropriate.

4 As to the Fourth Cause of Action

5 20. That the Court declare, adjudge and decree that Defendants violated California
6 Labor Code §§ 226.7 and 512, and the IWC Wage Orders;

7 21. For unpaid rest period premium wages as may be appropriate;

8 22. For pre-judgment interest on any unpaid compensation commencing from the date
9 such amounts were due;

10 23. For reasonable attorneys' fees under California Code of Civil Procedure § 1021.5,
11 and for costs of suit incurred herein; and

12 24. For such other and further relief as the Court may deem equitable and appropriate.

13 As to the Fifth Cause of Action

14 25. That the Court declare, adjudge and decree that Defendants violated California
15 Labor Code §§ 201, 202, and 203 by willfully failing to pay all compensation owed at the time of
16 termination of the employment;

17 26. For statutory wage penalties pursuant to California Labor Code § 203 for former
18 employees who have left Defendants' employ;

19 27. For pre-judgment interest on any unpaid wages from the date such amounts were
20 due;

21 28. For reasonable attorneys' fees and for costs of suit incurred herein; and

22 29. For such other and further relief as the Court may deem equitable and appropriate.

23 As to the Sixth Cause of Action

24 30. That the Court declare, adjudge and decree that Defendants violated the record
25 keeping provisions of California Labor Code § 226(a) and applicable IWC Wage Orders, and
26 willfully failed to provide accurate itemized wage statements thereto;

27 31. For statutory penalties and actual damages pursuant to California Labor Code §
28 226(e);

1 32. For injunctive relief to ensure compliance with this section, pursuant to California
2 Labor Code § 226(h);

3 33. For reasonable attorneys' fees and for costs of suit incurred herein; and

4 34. For such other and further relief as the Court may deem equitable and appropriate.

5 As to the Seventh Cause of Action

6 35. That the Court declare, adjudge and decree that Defendants violated California
7 Business & Professions Code §§ 17200, *et seq.* by failing to pay wages for all hours worked
8 (including minimum and overtime wages), failing to provide meal periods, failing to maintain
9 accurate records of meal periods, failing to authorize and permit rest periods, failing to maintain
10 accurate records of all hours worked and meal periods, and failing to furnish accurate wage
11 statements;

12 36. For restitution of unpaid wages to Plaintiff and all Class Members and
13 prejudgment interest from the day such amounts were due and payable;

14 37. For the appointment of a receiver to receive, manage and distribute any and all
15 funds disgorged from Defendants and determined to have been wrongfully acquired by
16 Defendants as a result of violations of California Business & Professions Code §§ 17200 *et seq.*;

17 38. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
18 California Code of Civil Procedure § 1021.5;

19 39. For injunctive relief to ensure compliance with this section, pursuant to California
20 Business & Professions Code §§ 17200, *et seq.*; and,

21 40. For such other and further relief as the Court may deem equitable and appropriate.

22 As to the Eighth Cause of Action

23 41. That the Court declare, adjudge and decree that Defendants violated the California
24 Labor Code by failing to pay wages for all hours worked (including minimum, straight time, and
25 overtime wages), failing to provide meal periods, failing to maintain accurate records of meal
26 periods, failing to authorize and permit rest periods, failing to maintain accurate records of all
27 hours worked and meal periods, failing to indemnify necessary business expenses, failing to pay
28 final wages at termination, and failing to furnish accurate wage statements;

42. For all actual, consequential and incidental losses and damages, according to proof;

43. For all civil penalties pursuant to California Labor Code § 2699, *et seq.*, and all other applicable Labor Code provisions;

44. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code § 2699;

45. For such other and further relief as the Court may deem equitable and appropriate.

As to all Causes of Action

46. For any additional relief that the Court deems just and proper.

Dated: January 08, 2021

Respectfully submitted,

MOON & YANG, APC

By:

Kane Moon
H. Scott Leviant
Ani Martirosian
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury as to all causes of action triable by jury.

Dated: January 08, 2021

MOON & YANG, APC

By:

Kane Moon
H. Scott Leviant
Ani Martirosian
Attorneys for Plaintiff

1 **PROOF OF SERVICE**

2 STATE OF CALIFORNIA)
3) ss
4 COUNTY OF LOS ANGELES)

5 I am employed in the county of Los Angeles, State of California. I am over the age of 18
6 and not a party to the within action; my business address is 1055 West Seventh Street, Suite
7 1880, Los Angeles, California 90017. On January 12, 2021, I served the foregoing document
described as:

8 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT:**

9 X by E-mailing ___ the original X a true copy to the following:

10
11 Grace Y. Horoupian, Esq.
Selywn Chu
12 **FISHER & PHILLIPS LLP**
2050 Main Street, Suite 1000
13 Irvine, California 92614
Email: ghoroupian@fisherphillips.com
14 Email: schu@fisherphillips.com

15 *Attorney for Defendant Actron Manufacturing, Inc.*

16
17 [✓] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles,
18 California, by e-mail delivery on the parties listed herein at their most recent known
e-mail address or e-mail of record in this action.

19
20 X (State) I declare under penalty of perjury under the laws of the State of
California that the above is true and correct.

21 Executed on January 12, 2021, at Los Angeles, California.

22
23 Jessica Reyes Flores

24 Name

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26 Signature
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