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BRANDON E. RILEY, CLERK
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Additional Counsel on the following page

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

ADEDEJI ADEJOBI, individually, and
on behalf of other members of the general
public similarly situated, and on behalf of
the State of California and aggrieved
employees pursuant to the Private
Attorneys General Act ("PAGA");

Plaintiff,

v.

NULAIID FOODS, INC., a California
corporation; NULAIID-THAYER, LLC, a
California limited liability company;
THAYER FOOD PRODUCTS, LLC, a
limited liability company; NUCAL
FOODS, INC., a California corporation;
and DOES 1 through 100, inclusive;

Defendants.

Case No.: STK-CV-443-2020-8025

CLASS ACTION COMPLAINT FOR DAMAGES

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 226.7 and 512(a) (Unpaid Meal Period Premiums);
- (3) Violation of California Labor Code § 226.7 (Unpaid Rest Period Premiums);
- (4) Violation of California Labor Code §§ 1194 and 1197 (Unpaid Minimum Wages);
- (5) Violation of California Labor Code §§ 201 and 202 (Final Wages Not Timely Paid);
- (6) Violation of California Labor Code § 226(a) (Non-Compliant Wage Statements);
- (7) Violation of California Labor Code §§ 2800 and 2802 (Unreimbursed Business Expenses);
- (8) Violation of California Labor Code § 1198 (Failure to Provide Suitable

- Seating);
(9) Violation of California Labor Code
§§ 551 and 552 (Day of Rest
Violations)
(10) Violation of California Labor Code
§§ 2698, *et seq.* (PAGA);
(11) Violation of California Business &
Professions Code §§ 17200, *et seq.*

DEMAND FOR JURY TRIAL

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COMES NOW, Plaintiff ADEDEJI ADEJOBI ("Plaintiff"), individually, and on behalf of other members of the general public similarly situated, and on behalf of the State of California and aggrieved employees pursuant to the Private Attorneys General Act ("PAGA"), and alleges as follows:

JURISDICTION AND VENUE

1. This class and PAGA representative action is brought pursuant to the California Code of Civil Procedure section 382 and California Labor Code section § 2698 *et seq.* The monetary damages and restitution sought by Plaintiff exceeds the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, Section 10, which grants the superior court "original jurisdiction in all other causes" except those given by statute to other courts. The statutes under which this action is brought do not specify any other basis for jurisdiction.

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

4. Venue is proper in this Court because, upon information and belief, Defendants maintain offices, have agents, and/or transact business in the State of California, including the County of San Joaquin. The majority of the acts and omissions alleged herein relating to Plaintiff took place in the State of California. Defendants employed Plaintiff within the State of California, County of San Joaquin.

PARTIES

5. Plaintiff ADEDEJI ADEJOBI is an individual residing in the State of California, County of San Joaquin.

1 6. Defendants NULAIID FOODS, INC. and NUCAL FOODS, INC., at all
2 times herein mentioned, were and are, upon information and belief, California
3 corporations, and at all times herein mentioned, were and are, employers whose
4 employees are engaged throughout the State of California, including the County of San
5 Joaquin. NULAIID-THAYER, LLC and THAYER FOOD PRODUCTS, LLC, at all
6 times herein mentioned, were and are, upon information and belief, California limited
7 liability companies, and at all times herein mentioned, were and are, employers whose
8 employees are engaged throughout the State of California, including the County of San
9 Joaquin.

10 7. At all relevant times, Defendants NULAIID FOODS, INC., NULAIID-
11 THAYER, LLC, THAYER FOOD PRODUCTS, LLC and NUCAL FOODS, INC. were
12 the "employer" of Plaintiff within the meaning of all applicable California laws and
13 statutes.

14 8. At all times herein relevant, Defendants NULAIID FOODS, INC.,
15 NULAIID-THAYER, LLC, THAYER FOOD PRODUCTS, LLC, NUCAL FOODS,
16 INC. and DOES 1 through 100, and each of them, were the agents, partners, joint
17 venturers, joint employers, representatives, servants, employees, successors-in-
18 interest, co-conspirators and assigns, each of the other, and at all times relevant hereto
19 were acting within the course and scope of their authority as such agents, partners, joint
20 venturers, joint employers, representatives, servants, employees, successors, co-
21 conspirators and assigns, and all acts or omissions alleged herein were duly committed
22 with the ratification, knowledge, permission, encouragement, authorization, and
23 consent of each defendant designated herein.

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1 9. The true names and capacities, whether corporate, associate, individual or
2 otherwise, of Defendants DOES 1 through 100, inclusive, are unknown to Plaintiff,
3 who sues said defendants by such fictitious names. Plaintiff is informed and believes,
4 and based on that information and belief alleges, that each of the Defendants designated
5 as a DOE is legally responsible for the events and happenings referred to in this
6 Complaint, and unlawfully caused the injuries and damages to Plaintiff and the other
7 class members as alleged in this Complaint. Plaintiff will seek leave of court to amend
8 this Complaint to show the true names and capacities when the same have been
9 ascertained.

10 10. Defendants NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER
11 FOOD PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100 will
12 hereinafter collectively be referred to as "Defendants."

13 11. Plaintiff further alleges that Defendants directly or indirectly controlled or
14 affected the working conditions, wages, working hours, and conditions of employment
15 of Plaintiff and the other class members so as to make each of said Defendants
16 employers and employers liable under the statutory provisions set forth herein.

17 **CLASS ACTION ALLEGATIONS**

18 12. Plaintiff brings causes of action 1-9 and 11 on his own behalf and on behalf
19 of all other members of the general public similarly situated, and, thus, seeks class
20 certification of causes of action 1-9 and 11 under Code of Civil Procedure section 382.

21 13. The proposed class is defined as follows:

22 All current and former hourly-paid or non-exempt employees of
23 Defendants within the State of California at any time during the period
24 from April 6, 2016¹ to final judgment.

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27 ¹ Per Emergency Rule 9 (Tolling statute of limitations for civil causes of action) of the Judicial
28 Council's Emergency Rules Related to COVID-19, all statute of limitations for civil causes of
action that exceed 180 days are tolled from April 6, 2020 until October 1, 2020. Accordingly,
Plaintiff's claims were tolled during that time period.

1 14. Plaintiff reserves the right to establish subclasses as appropriate.

2 15. The class is ascertainable and there is a well-defined community of interest
3 in the litigation:

4 a. Numerosity: The class members are so numerous that joinder of all
5 class members is impracticable. The membership of the entire class
6 is unknown to Plaintiff at this time; however, the class is estimated
7 to be greater than fifty (50) individuals and the identity of such
8 membership is readily ascertainable by inspection of Defendants'
9 employment records.

10 b. Typicality: Plaintiff's claims are typical of all other class members'
11 claims as demonstrated herein. Plaintiff will fairly and adequately
12 protect the interests of the other class members with whom he has
13 a well-defined community of interest.

14 c. Adequacy: Plaintiff will fairly and adequately protect the interests
15 of each class member, with whom he has a well-defined community
16 of interest and typicality of claims, as demonstrated herein.
17 Plaintiff has no interest that is antagonistic to the other class
18 members. Plaintiff's attorneys, the proposed class counsel, are
19 versed in the rules governing class action discovery, certification,
20 and settlement. Plaintiff has incurred, and during the pendency of
21 this action will continue to incur, costs and attorneys' fees, that
22 have been, are, and will be necessarily expended for the prosecution
23 of this action for the substantial benefit of each class member.

24 d. Superiority: A class action is superior to other available methods
25 for the fair and efficient adjudication of this litigation because
26 individual joinder of all class members is impractical.

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1 e. Public Policy Considerations: Certification of this lawsuit as a class
2 action will advance public policy objectives. Employers of this
3 great state violate employment and labor laws every day. Current
4 employees are often afraid to assert their rights out of fear of direct
5 or indirect retaliation. However, class actions provide the class
6 members who are not named in the complaint anonymity that
7 allows for the vindication of their rights.

8 16. There are common questions of law and fact as to the class members that
9 predominate over questions affecting only individual members. The following common
10 questions of law or fact, among others, exist as to the members of the class:

- 11 a. Whether Defendants' failure to pay wages, without abatement or
12 reduction, in accordance with the California Labor Code, was
13 willful;
- 14 b. Whether Defendants failed to pay their hourly-paid or non-exempt
15 employees within the State of California for all hours worked,
16 missed meal periods and rest breaks in violation of California law;
- 17 c. Whether Defendants required Plaintiff and the other class members
18 to work over eight (8) hours per day and/or over forty (40) hours
19 per week and failed to pay the legally required overtime
20 compensation to Plaintiff and the other class members;
- 21 d. Whether Defendants properly calculated the regular rate for
22 Plaintiff and the other class members to worked overtime and
23 earned incentive pay;
- 24 e. Whether Defendants deprived Plaintiff and the other class members
25 of meal and/or rest periods or required Plaintiff and the other class
26 members to work during meal and/or rest periods without
27 compensation;

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- 1 f. Whether Defendants failed to pay minimum wages to Plaintiff and
2 the other class members for all hours worked;
3 g. Whether Defendants failed to provide suitable seating when the
4 nature of the work reasonably permitted seating;
5 h. Whether Defendants failed to provide one day's rest in seven;
6 i. Whether Defendants caused employees to work without a day of
7 rest;
8 j. Whether Defendants failed to pay all wages due to Plaintiff and the
9 other class members within the required time upon their discharge
10 or resignation;
11 k. Whether Defendants failed to timely pay all wages due to Plaintiff
12 and the other class members during their employment;
13 l. Whether Defendants complied with wage reporting as required by
14 the California Labor Code, including, inter alia, section 226;
15 m. Whether Defendants failed to reimburse class members for necessary
16 business-related expenses and costs;
17 n. Whether Defendants' conduct was willful or reckless;
18 o. Whether Defendants engaged in unfair business practices in
19 violation of California Business & Professions Code section 17200,
20 *et seq.*;
21 p. The appropriate amount of damages, restitution, and/or monetary
22 penalties resulting from Defendants' violation of California law;
23 and
24 q. Whether Plaintiff and the other class members are entitled to
25 compensatory damages pursuant to the California Labor Code.

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GENERAL ALLEGATIONS

17. During the relevant time period set forth herein, Defendants employed Plaintiff and other persons as hourly-paid or non-exempt employees within the State of California.

18. Defendants, jointly and severally, employed Plaintiff as an hourly-paid employee from October 22, 2018 to August 9, 2020 in the State of California, County of San Joaquin.

19. Defendants had the authority to hire and terminate Plaintiff and the other class members and aggrieved employees; to set work rules and conditions governing Plaintiff's and other class members' and aggrieved employees' employment; and to supervise their daily employment activities.

20. Defendants exercised sufficient authority over the terms and conditions of Plaintiff and other class members' and aggrieved employees' employment for them to be joint employers of Plaintiff and the other class members and aggrieved employees.

21. Defendants directly hired and paid wages and benefits to Plaintiff and the other class members and aggrieved employees.

22. Defendants continue to employ hourly-paid or non-exempt employees within the State of California.

23. Plaintiff and the other class members and aggrieved employees worked over eight (8) hours in a day, and/or forty (40) hours in a week during their employment with Defendants.

24. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a uniform policy and systematic scheme of wage abuse against their hourly-paid or non-exempt employees within the State of California. This scheme involved, inter alia, failing to pay them for all hours worked, including overtime hours worked, missed meal periods, and missed rest breaks in violation of California law. This scheme also included failing to reimburse them for required business expenses, provide suitable seating, and provide one day's rest in seven.

25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members and aggrieved employees were entitled to receive certain wages for overtime compensation and that Plaintiff and the other class members and aggrieved employees were not receiving wages for overtime compensation.

26. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to provide Plaintiff and the other class members and aggrieved employees the required rest and meal periods during the relevant time period as required under the Industrial Welfare Commission Wage Orders and thus they are entitled to any and all applicable penalties.

27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and the other class members and aggrieved employees were entitled to receive all timely and complete meal periods or payment of one additional hour of pay at their regular rate of pay when a meal period was missed, late or interrupted, and that Plaintiff and the other class members and aggrieved employees did not receive all timely and proper meal periods or payment of one additional hour of pay at their regular rate of pay when a meal period was missed.

28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or should have known that Plaintiff and other class members and aggrieved employees were entitled to receive all timely rest periods without interruption or payment of one additional hour of pay at their regular rate of pay when a rest period was missed, late or interrupted, and that Plaintiff and the other class members and aggrieved employees did not receive all rest periods or payment of one additional hour of pay at their regular rate of pay when a rest period was missed.

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1 29. Plaintiff is informed and believes, and based thereon alleges, that
2 Defendants knew or should have known that Plaintiff and the other class members and
3 aggrieved employees were entitled to receive at least minimum wages for
4 compensation and that Plaintiff and the other class members and aggrieved employees
5 were not receiving at least minimum wages for all hours worked.

6 30. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants knew or should have known that Plaintiff and the other class members and
8 aggrieved employees were entitled to receive the wages owed to them upon discharge
9 or resignation, including overtime and minimum wages and meal and rest period
10 premiums, and that Plaintiff and the other class members and aggrieved employees did
11 not, in fact, receive such wages owed to them at the time of their discharge or
12 resignation.

13 31. Plaintiff is informed and believes, and based thereon alleges, that
14 Defendants knew or should have known that Plaintiff and the other class members and
15 aggrieved employees were entitled to receive complete and accurate wage statements
16 in accordance with California law, but, in fact, Plaintiff and the other class members
17 and aggrieved employees did not receive complete and accurate wage statements from
18 Defendants. The deficiencies included, inter alia, the failure to include the total number
19 of hours worked by Plaintiff and the other class members and aggrieved employees.

20 32. Plaintiff is informed and believes, and based thereon alleges, that
21 Defendants knew or should have known that Plaintiff and the other class members and
22 aggrieved employees were entitled to reimbursement for necessary business-related
23 expenses, including for reimbursement for the cost of tools which were essential for
24 their satisfactory job performances.

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1 33. Plaintiff is informed and believes, and based thereon alleges, that
2 Defendants knew or should have known that Plaintiff and the other class members and
3 aggrieved employees were entitled to suitable seating when the nature of their work
4 reasonably permits the use of seats, but, in fact, did not provide required suitable
5 seating.

6 34. Plaintiff is informed and believes, and based thereon alleges, that
7 Defendants knew or should have known that Plaintiff and the other class members and
8 aggrieved employees were entitled to one day's rest in seven, but, in fact, managed
9 their workforce in such a way as to deny the required day of rest, failing to provide
10 Plaintiff and the other class members and aggrieved employees with one day's rest in
11 seven.

12 35. Plaintiff is informed and believes, and based thereon alleges, that
13 Defendants knew or should have known that Defendants had to keep complete and
14 accurate payroll records for Plaintiff and the other class members and aggrieved
15 employees in accordance with California law, but, in fact, did not keep complete and
16 accurate payroll records for Plaintiff and the other class members and aggrieved
17 employees.

18 36. Plaintiff is informed and believes, and based thereon alleges, that
19 Defendants knew or should have known that they had a duty to compensate Plaintiff
20 and the other class members and aggrieved employees pursuant to California law, and
21 that Defendants had the financial ability to pay such compensation, but willfully,
22 knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the
23 other class members and aggrieved employees that they were properly paying wages,
24 all in order to increase Defendants' profits.

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1 37. During the relevant time period set forth herein, Defendants failed to pay
2 overtime wages to Plaintiff and the other class members and aggrieved employees for
3 all hours worked. Plaintiff and other class members and aggrieved employees were
4 required to work more than eight (8) hours per day and/or forty (40) hours per week
5 without all required overtime compensation.

6 38. During the relevant time period set forth herein, Defendants failed to
7 provide the requisite uninterrupted and timely meal and rest periods to Plaintiff and the
8 other class members and aggrieved employees.

9 39. During the relevant time period set forth herein, Defendants failed to pay
10 Plaintiff and the other class members and aggrieved employees at least minimum wages
11 for all hours worked.

12 40. During the relevant time period set forth herein, Defendants failed to pay
13 Plaintiff and the other class members and aggrieved employees the wages owed to them
14 upon discharge or resignation.

15 41. During the relevant time period set forth herein, Defendants failed to
16 provide complete or accurate wage statements to Plaintiff and the other class members
17 and aggrieved employees.

18 42. During the relevant time period set forth herein, Defendants failed to keep
19 complete or accurate payroll records for Plaintiff and the other class members and
20 aggrieved employees.

21 43. During the relevant time period set forth herein, Defendants failed to
22 properly compensate Plaintiff and the other class members and aggrieved employees
23 pursuant to California law in order to increase Defendants' profits.

24 44. California Labor Code section 218 states that nothing in Article 1 of the
25 Labor Code shall limit the right of any wage claimant to "sue directly . . . for any wages
26 or penalty due to him [or her] under this article."

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FIRST CAUSE OF ACTION

**(Violation of California Labor Code §§ 510 and 1198)
(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD
PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)**

45. Plaintiff incorporates by reference the allegations contained in Paragraphs 1 through 44, and each and every part thereof with the same force and effect as though fully set forth herein.

46. California Labor Code section 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

47. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and the other class members employed by Defendants, who work(ed) more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time-and-one-half for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

48. The applicable IWC Wage Order further provides that Defendants are and were required to pay Plaintiff and the other class members overtime compensation at a rate of two times their regular rate of pay for all hours worked in excess of twelve (12) hours in a day.

49. California Labor Code section 510 codifies the right to overtime compensation at one-and-one-half times the regular hourly rate for hours worked in excess of eight (8) hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh day of work, and overtime compensation at twice the regular hourly rate for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on the seventh day of work.

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1 57. During the relevant time period set forth herein, the applicable IWC Wage
2 Order and California Labor Code section 512(a) provide that an employer may not
3 require, cause or permit an employee to work for a work period of more than five (5)
4 hours per day without providing the employee with a meal period of not less than thirty
5 (30) minutes, except that if the total work period per day of the employee is no more
6 than six (6) hours, the meal period may be waived by mutual consent of both the
7 employer and employee.

8 58. During the relevant time period set forth herein, the applicable IWC Wage
9 Order and California Labor Code section 512(a) further provide that an employer may
10 not require, cause, or permit an employee to work for a work period of more than ten
11 (10) hours per day without providing the employee with a second uninterrupted meal
12 period of not less than thirty (30) minutes, except that if the total hours worked is no
13 more than twelve (12) hours, the second meal period may be waived by mutual consent
14 of the employer and the employee only if the first meal period was not waived.

15 59. During the relevant time period set forth herein, Plaintiff and the other
16 class members who were scheduled to work for a period of time no longer than six (6)
17 hours, and who did not waive their legally-mandated meal periods by mutual consent,
18 were required to work for periods longer than five (5) hours without an uninterrupted
19 meal period of not less than thirty (30) minutes and/or without a rest period.

20 60. During the relevant time period set forth herein, Plaintiff and the other
21 class members who were scheduled to work for a period of time no longer than twelve
22 (12) hours, and who did not waive their legally-mandated meal periods by mutual
23 consent, were required to work for periods longer than ten (10) hours without an
24 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
25 period.

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1 61. During the relevant time period set forth herein, Plaintiff and the other
2 class members who were scheduled to work for a period of time in excess of six (6)
3 hours were required to work for periods longer than five (5) hours without an
4 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
5 period.

6 62. During the relevant time period set forth herein, Plaintiff and the other
7 class members who were scheduled to work for a period of time in excess of twelve
8 (12) hours were required to work for periods longer than ten (10) hours without an
9 uninterrupted meal period of not less than thirty (30) minutes and/or without a rest
10 period.

11 63. During the relevant time period set forth herein, Defendants intentionally
12 and willfully required Plaintiff and the other class members to work during meal
13 periods and failed to compensate Plaintiff and the other class members the full meal
14 period premium for work performed during meal periods.

15 64. During the relevant time period set forth herein, Defendants failed to pay
16 Plaintiff and the other class members the full meal period premium due pursuant to
17 California Labor Code section 226.7.

18 65. Defendants' conduct violates applicable IWC Wage Order and California
19 Labor Code sections 226.7 and 512(a).

20 66. Pursuant to the applicable IWC Wage Order and California Labor Code
21 section 226.7(b), Plaintiff and the other class members are entitled to recover from
22 Defendants one additional hour of pay at the employee's regular rate of compensation
23 for each workday that the meal or rest period is not provided.

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THIRD CAUSE OF ACTION

(Violation of California Labor Code § 226.7)

(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)

67. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 66, and each and every part thereof with the same force and effect as though fully set forth herein.

68. During the relevant time period set forth herein, the applicable IWC Wage Order and California Labor Code section 226.7 were applicable to Plaintiff's and the other class members' employment by Defendants.

69. During the relevant time period set forth herein, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC.

70. During the relevant time period set forth herein, the applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

71. During the relevant time period set forth herein, Defendants required Plaintiff and the other class members to work four (4) or more hours without authorizing or permitting a ten (10) minute rest period per each four (4) hour period worked.

72. During the relevant time period set forth herein, Defendants willfully required Plaintiff and the other class members to work during rest periods and failed to pay Plaintiff and the other class members the full rest period premium for work performed during rest periods.

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1 73. During the relevant time period set forth herein, Defendants failed to pay
2 Plaintiff and the other class members the full rest period premium due pursuant to
3 California Labor Code section 226.7.

4 74. Defendants' conduct violates applicable IWC Wage Orders and California
5 Labor Code section 226.7.

6 75. Pursuant to the applicable IWC Wage Orders and California Labor Code
7 section 226.7(b), Plaintiff and the other class members are entitled to recover from
8 Defendants one additional hour of pay at the employees' regular hourly rate of
9 compensation for each workday that the rest period was not provided.

10 **FOURTH CAUSE OF ACTION**

11 **(Violation of California Labor Code §§ 1194 and 1197)**

12 **(Against NULAI D FOODS, INC., NULAI D-THAYER, LLC, THAYER FOOD**
13 **PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)**

14 76. Plaintiff incorporates by reference the allegations contained in paragraphs
15 1 through 75 and each and every part thereof with the same force and effect as though
16 fully set forth herein.

17 77. During the relevant time period set forth herein, California Labor Code
18 sections 1194 and 1197 provide that the minimum wage to be paid to employees, and
19 the payment of a lesser wage than the minimum so fixed, is unlawful.

20 78. During the relevant time period set forth herein, Defendants failed to pay
21 minimum wages to Plaintiff and the other class members as required, pursuant to
22 California Labor Code sections 1194 and 1197.

23 79. Defendants' failure to pay Plaintiff and the other class members the
24 minimum wage as required violates California Labor Code sections 1194 and 1197.
25 Pursuant to those sections, Plaintiff and other class members are entitled to recover the
26 unpaid balance of their minimum wage compensation as well as interest, costs, and
27 attorney's fees, and liquidated damages in an amount equal to the wages unlawfully
28 unpaid and interest thereon.

1 80. Pursuant to California Labor Code section 1194.2, Plaintiff and the other
2 class members are entitled to recover liquidated damages in an amount equal to the
3 wages unlawfully unpaid and interest thereon.

4 **FIFTH CAUSE OF ACTION**

5 **(Violation of California Labor Code §§ 201 and 202)**

6 **(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD**
7 **PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)**

8 81. Plaintiff incorporates by reference the allegations contained in paragraphs
9 1 through 80, and each and every part thereof with the same force and effect as though
10 fully set forth herein.

11 82. During the relevant time period set forth herein, California Labor Code
12 sections 201 and 202 provide that if an employer discharges an employee, the wages
13 earned and unpaid at the time of discharge are due and payable immediately, and if an
14 employee quits his or her employment, his or her wages shall become due and payable
15 not later than seventy-two (72) hours thereafter, unless the employee has given seventy-
16 two (72) hours notice of his or her intention to quit, in which case the employee is
17 entitled to his or her wages at the time of quitting.

18 83. During the relevant time period set forth herein, Defendants intentionally
19 and willfully failed to pay Plaintiff and the other class members who are no longer
20 employed by Defendants their wages, earned and unpaid, within seventy-two (72)
21 hours of their leaving Defendants' employ.

22 84. Defendants' failure to pay Plaintiff and the other class members who are
23 no longer employed by Defendants their wages, earned and unpaid, within seventy-two
24 (72) hours of their leaving Defendants' employ, is in violation of California Labor Code
25 sections 201 and 202.

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85. California Labor Code section 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 from the due date thereof at the same rate until paid or until an action is commenced; but the wages shall not continue for more than thirty (30) days.

86. Plaintiff and the other class members are entitled to recover from Defendants the statutory penalty wages for each day they were not paid, up to the thirty (30) day maximum as provided by Labor Code section 203.

SIXTH CAUSE OF ACTION

(Violation of California Labor Code § 226(a))

(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)

87. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 86, and each and every part thereof with the same force and effect as though fully set forth herein.

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88. During the relevant time period set forth herein, California Labor Code section 226(a) provides that every employer shall furnish each of his or her employees an accurate itemized statement in writing showing (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 his or her 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

89. Defendants have intentionally and willfully failed to provide Plaintiff and the other class members with complete and accurate wage statements. The deficiencies include but are not limited to: the failure to include the total number of hours worked by Plaintiff and other class members, failure to list the full name of the legal entity that is the employer, and other failures derivative of the wrongful employment practices alleged above.

90. As a result of Defendants' violation of California Labor Code section 226(a), Plaintiff and the other class members have suffered injury and damage to their statutorily protected rights.

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1 91. More specifically, Plaintiff and the other class members have been injured
2 by Defendants' intentional and willful violation of California Labor Code section
3 226(a) because they were denied both their legal right to receive, and their protected
4 interest in receiving, accurate and itemized wage statements pursuant to California
5 Labor Code section 226(a).

6 92. Plaintiff and the other class members are entitled to recover from
7 Defendants the greater of their actual damages caused by Defendants' failure to comply
8 with California Labor Code section 226(a), or an aggregate penalty not exceeding four
9 thousand dollars per employee.

10 93. Plaintiff and the other class members are also entitled to injunctive relief
11 to ensure compliance with this section, pursuant to California Labor Code section
12 226(g).

13 **SEVENTH CAUSE OF ACTION**

14 **(Violation of California Labor Code §§ 2800 and 2802)**

15 **(Against NULOID FOODS, INC., NULOID-THAYER, LLC, THAYER FOOD**
16 **PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)**

17 94. Plaintiff incorporates by reference the allegations contained in paragraphs
18 1 through 93, and each and every part thereof with the same force and effect as though
19 fully set forth herein.

20 95. Pursuant to California Labor Code sections 2800 and 2802, an employer
21 must reimburse its employee for all necessary expenditures incurred by the employee in
22 direct consequence of the discharge of his or her job duties or in direct consequence of
23 his or her obedience to the directions of the employer.

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1 96. Defendants have intentionally and willfully failed to reimburse the other
2 class members for all necessary business-related expenses and costs. The other class
3 members are entitled to recover from Defendants their business-related expenses and
4 costs incurred during the course and scope of their employment, including the cost of
5 tools necessary to successfully perform their jobs, plus interest accrued from the date on
6 which the employee incurred the necessary expenditures at the same rate as judgments
7 in civil actions in the State of California.

8 **EIGHTH CAUSE OF ACTION**

9 **(Violation of California Labor Code § 1198 and Wage Order 7-2001 ¶14)**
10 **(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD**
11 **PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)**

12 97. Plaintiff incorporates by reference the allegations contained in paragraphs
13 1 through 96, and each and every part thereof with the same force and effect as though
14 fully set forth herein.

15 98. Labor Code section 1198 states, in pertinent part, "The employment of any
16 employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful."
17 Section 14 of the applicable Wage Order provides that:

18 (A) All working employees shall be provided with suitable seats when
19 the nature of the work reasonably permits the use of seats.

20 (B) When employees are not engaged in the active duties of their
21 employment and the nature of the work requires standing, an adequate
22 number of suitable seats shall be placed in reasonable proximity to the
23 work area and employees shall be permitted to use such seats when it
24 does not interfere with the performance of their duties.

25 99. At all relevant times, Defendants failed to provide Plaintiff and other class
26 members with suitable seating during their employment as required by section 14 of
27 the applicable Wage Order.

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100. Plaintiff and other class members were not provided with seating during shifts in which they worked in positions which would reasonably permit the use of seating, including when performing tasks like welding, rebuilding pump or valves, and many other tasks that can be performed while seated on a workbench. Accordingly, Plaintiff, on behalf of himself and other class members will pursue all available remedies to the extent allowed by law for the alleged violations.

NINTH CAUSE OF ACTION

(Violation of California Labor Code §§ 551 and 552)

(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)

101. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 101, and each and every part thereof with the same force and effect as though fully set forth herein.

102. Labor Code §§551 and 552 require that employers provide employees with 'one day's rest in seven.' The California Supreme Court has confirmed that "[a] day of rest is guaranteed for each workweek." (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1078.)

103. Defendants frequently scheduled Plaintiff and other class members to work more than six days in seven, depriving them of the required day of rest. This excessive scheduling is in clear violation of California's day of rest laws.

104. As a result of these violations, Plaintiff and the other class members are entitled to and seek interest, applicable penalties, and attorneys' fees and costs.

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TENTH CAUSE OF ACTION

(Violation of California Labor Code §§ 2698, *et seq.*)

**(Against NULAI D FOODS, INC., NULAI D-THAYER, LLC, THAYER FOOD
PRODUCTS, LLC, and DOES 1 through 100)**

105. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 104, and each and every part thereof with the same force and effect as though fully set forth herein.

106. PAGA expressly establishes that any provision of the California Labor Code which provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments, divisions, commissions, boards, agencies or employees for a violation of the California Labor Code, may be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees.

107. On August 6, 2020, Plaintiff provided written notice to the LWDA and Defendants of the specific provisions of the Labor Code he contends were violated, and the theories supporting his contentions. On August 7, 2020, Plaintiff provided further written notice to the LWDA asserting additional provisions of the Labor Code he contends were violated, and the theories supporting his contentions. Attached hereto as Exhibit 1 and incorporated by reference are copies of the August 6, 2020 and August 7, 2020 written notices to the LWDA, showing compliance with §2699.3. No notice of intent to investigate the violations was provided within the statutory period. Consequently, Plaintiff has exhausted all administrative remedies, and on behalf of himself, the State of California, and all aggrieved employees, now pursues this cause of action as permitted by §2698, *et seq.*

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1 108. Plaintiff and the other hourly-paid or non-exempt employees are
2 "aggrieved employees" as defined by California Labor Code § 2699(c) in that they are
3 all current and former hourly-paid or non-exempt employees of Defendants within the
4 State of California who worked for Defendants at any time during the period from
5 August 6, 2019 to the present, and one or more of the alleged violations was committed
6 against them.

7 **Failure to Pay Minimum and Overtime Wages**

8 107. At all times relevant herein, Defendants were required to compensate their
9 non-exempt employees minimum wages for all hours worked and overtime wages for all
10 hours worked in excess of eight (8) hours in a day or forty (40) hours in a workweek,
11 pursuant to the mandate of Labor Code §§ 510, 1194, 1197, and 1198.

12 108. As a policy and practice, Defendants failed to compensate Plaintiff and the
13 other aggrieved current and former employees for all hours worked, resulting in a failure
14 to pay all minimum wages and overtime wages, where applicable.

15 **Failure to Provide Meal Periods and Rest Breaks**

16 109. In accordance with the mandates of Labor Code §§ 226.7 and 512,
17 Defendants were required to authorize and permit their non-exempt employees to take a
18 10-minute rest break for every four (4) hours worked or major fraction thereof, and were
19 further required to provide their non-exempt employees with a 30-minute meal period
20 for every five (5) hours worked.

21 110. As a policy and practice, Defendants failed to provide Plaintiff and the other
22 aggrieved current and former employees with legally-mandated meal periods and rest
23 breaks and failed to pay proper compensation for this failure.

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1 **Failure to Timely Pay Wages During Employment**

2 111. At all times relevant herein, Defendants were required to pay their
3 employees within a specified time period pursuant to the mandate of Labor Code § 204.

4 112. As a policy and practice, Defendants failed to pay Plaintiff and the other
5 aggrieved current and former employees all wages due and owing them within the
6 required time period.

7 **Failure to Timely Pay Wages Upon Termination**

8 113. At all times relevant herein, Defendants were required to pay their
9 employees all wages owed in a timely fashion at the end of employment pursuant to
10 California Labor Code §§ 201 to 204.

11
12 114. As a result of Defendants' Labor Code violations alleged above, Defendants
13 failed to pay Plaintiff and the other aggrieved former employees their final wages
14 pursuant to Labor Code §§ 201 to 204 and accordingly owe waiting time penalties
15 pursuant to Labor Code § 203.

16 **Failure to Provide Complete and Accurate Wage Statements**

17 115. At all times relevant herein, Defendants were required to keep *accurate*
18 records regarding their California employees pursuant to the mandate of Labor Code §§
19 226 and 1174.

20 116. As a result of Defendants' various Labor Code violations, Defendants failed
21 to keep accurate records regarding Plaintiff and the other aggrieved current and former
22 employees. For example, Defendants failed in their affirmative obligation to keep
23 accurate records regarding Plaintiff and the other aggrieved current and former
24 employees' gross wages earned, total hours worked, all deductions, net wages earned,
25 and all applicable hourly rates and the number of hours worked at each hourly rate, and
26 list the true legal name of the entity that is the employer.

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1 **Failure to Reimburse Business Expenses**

2 117. At all times relevant herein, Defendants were required to reimburse its
3 employees for any and all necessary expenditures or losses incurred by the employees in
4 direct consequences of the discharge or his or her duties pursuant to the mandate of Labor
5 Code §§ 2800 and 2802.

6 118. As a policy and practice, Defendants failed to reimburse Plaintiff and the
7 other aggrieved current and former employees for all business expenses incurred and
8 owing them within the required time period.

9 **Failure to Provide Suitable Seating**

10 119. At all times relevant herein, Defendants were required to provide employees
11 with suitable seating when the nature of the work reasonably permits the use of seats
12 pursuant to the mandate of the applicable IWC Wage Order.

13 120. As a policy and practice, Defendants failed to provide Plaintiff and the other
14 aggrieved current and former employees suitable seating during their employment.

15
16 **Failure to Provide One Day's Rest in Seven**

17 121. At all times relevant herein, Defendants were required to provide employees
18 one day's rest in seven pursuant to the mandate of the applicable IWC Wage Order.

19 122. As a policy and practice, Defendants required Plaintiff and the other
20 aggrieved employees to work seven days in a row or more without one day's rest.

21 **Penalties**

22 123. Pursuant to California Labor Code § 2699, Plaintiff, individually, and on
23 behalf of other current and former aggrieved employees, requests and is entitled to
24 recover from Defendants, and each of them, civil penalties, interest, attorneys' fees and
25 costs, including but not limited to:

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- 1 a. Penalties under California Labor Code § 2699 in the amount of a
2 hundred dollars (\$100) for each aggrieved employee per pay period for
3 the initial violation, and two hundred dollars (\$200) for each aggrieved
4 employee per pay period for each subsequent violation;
- 5 b. Penalties under California Code of Regulations Title 8 § 11040 in the
6 amount of fifty dollars (\$50) for each aggrieved employee per pay
7 period for the initial violation, and one hundred dollars (\$100) for each
8 aggrieved employee per pay period for each subsequent violation;
- 9 c. Penalties under California Labor Code § 210 in addition to, and
10 entirely independent and apart from, any other penalty provided in the
11 California Labor Code in the amount of a hundred dollars (\$100) for
12 each aggrieved employee per pay period for the initial violation, and
13 two hundred dollars (\$200) for each aggrieved employee per pay
14 period for each subsequent violation;
- 15 d. Penalties under Labor Code § 1197.1 in the amount of a hundred
16 dollars (\$100) for each aggrieved employee per pay period for the
17 initial violation, and two hundred fifty dollars (\$250) for each
18 aggrieved employee per pay period for each subsequent violation;
- 19 e. Any and all additional penalties as provided by the Labor Code and/or
20 other statutes; and
- 21 f. Attorneys' fees and costs pursuant to Labor Code §§ 210, 1194, and
22 2699, and any other applicable statute.

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ELEVENTH CAUSE OF ACTION

(Violation of California Business & Professions Code §§ 17200, *et seq.*)
(Against NULAIID FOODS, INC., NULAIID-THAYER, LLC, THAYER FOOD
PRODUCTS, LLC, NUCAL FOODS, INC. and DOES 1 through 100)

124. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 123, and each and every part thereof with the same force and effect as though fully set forth herein.

125. Defendants' conduct, as alleged herein, has been, and continues to be unfair, unlawful and harmful to Plaintiff, other class members, to the general public, and Defendants' competitors. Accordingly, Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

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

127. A violation of California Business & Professions Code section 17200, *et seq.* may be predicated on the violation of any state or federal law. In this instant case, Defendants' policy and practice of requiring Plaintiff and the other class members work overtime hours without paying them proper compensation violate California Labor Code sections 510 and 1198. Additionally, Defendants' policy and practice of requiring Plaintiff and the other class members, to work through their meal and rest periods without paying them proper compensation violate California Labor Code sections 226.7 and 512(a). Moreover, Defendants' policy and practice of failing to timely pay wages to Plaintiff and the other class members violate California Labor Code sections 201 and 202. Failing to provide suitable seating (§1198), reimburse required business expenses (§2802), and provide one day's rest in seven (§§551, 552) are also unlawful and unfair business practices. Defendants also violated California Labor Code sections 226(a), 1194, 1197, 2800 and 2802.

1 128. As a result of the herein described violations of California law, Defendants
2 unlawfully gained an unfair advantage over other businesses.

3 129. Plaintiff and the other class members have been personally injured by
4 Defendants' unlawful business acts and practices as alleged herein, including but not
5 necessarily limited to the loss of money and/or property.

6 130. Pursuant to California Business & Professions Code section 17200, *et seq.*,
7 Plaintiff and the other class members are entitled to restitution of the wages withheld
8 and retained by Defendants during a period that commences four years prior to the
9 filing of this Complaint; an award of attorneys' fees pursuant to California Code of
10 Civil procedure section 1021.5 and other applicable laws; and an award of costs.

11 **DEMAND FOR JURY TRIAL**

12 Plaintiff, individually, and on behalf of other members of the general public
13 similarly situated, requests a trial by jury.

14 **PRAYER FOR RELIEF**

15 WHEREFORE, Plaintiff, individually and on behalf of all other members of the
16 general public similarly situated, prays for relief and judgment against Defendants,
17 jointly and severally, as follows:

18 **Class Certification**

- 19 1. That this action be certified as a class action;
20 2. That Plaintiff be appointed as representative of the Class;
21 3. That counsel for Plaintiff be appointed as Class Counsel; and
22 4. That Defendants provide to Class Counsel immediately the names and
23 most current contact information (address, e-mail and telephone numbers) of all class
24 members.

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As to the First Cause of Action

5. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to pay all overtime wages due to Plaintiff and the other class members;

6. For general unpaid wages at overtime wage rates and such general and special damages as may be appropriate;

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

8. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194; and

9. For such other and further relief as the court may deem just and proper.

As to the Second Cause of Action

10. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7 and 512 and applicable IWC Wage Orders by willfully failing to provide all meal periods (including second meal periods) to Plaintiff and the other class members;

11. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a meal period was not provided;

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

13. For premium wages pursuant to California Labor Code section 226.7(b);

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

15. For reasonable attorneys' fees and costs of suit incurred herein; and

16. For such other and further relief as the court may deem just and proper.

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As to the Third Cause of Action

17. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 226.7 and applicable IWC Wage Orders by willfully failing to provide all rest periods to Plaintiff and the other class members;

18. That the Court make an award to Plaintiff and the other class members of one (1) hour of pay at each employee's regular rate of compensation for each workday that a rest period was not provided;

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

20. For premium wages pursuant to California Labor Code section 226.7(b);

21. For pre-judgment interest on any unpaid wages from the date such amounts were due; and

22. For such other and further relief as the court may deem just and proper.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 1194 and 1197 by willfully failing to pay minimum wages to Plaintiff and the other class members;

24. For general unpaid wages and such general and special damages as may be appropriate;

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

26. For reasonable attorneys' fees and costs of suit incurred herein pursuant to California Labor Code section 1194(a);

27. For liquidated damages pursuant to California Labor Code section 1194.2; and

28. For such other and further relief as the court may deem just and proper.

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As to the Fifth Cause of Action

29. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 201, 202, and 203 by willfully failing to pay all compensation owed at the time of termination of the employment of Plaintiff and other class members no longer employed by Defendants;

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

31. For statutory wage penalties pursuant to California Labor Code section 203 for the other class members who have left Defendants' employ;

32. For pre-judgment interest on any unpaid compensation from the date such amounts were due; and

33. For such other and further relief as the court may deem just and proper.

As to the Sixth Cause of Action

34. That the Court declare, adjudge and decree that Defendants violated the record keeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and the other class members, and willfully failed to provide accurate itemized wage statements thereto;

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

36. For statutory penalties pursuant to California Labor Code section 226(e);

37. For injunctive relief to ensure compliance with this section, pursuant to California Labor Code section 226(g); and

38. For such other and further relief as the court may deem just and proper.

As to the Seventh Cause of Action

39. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 2800 and 2802 by willfully failing to reimburse the other class members for all necessary business-related expenses as required by California Labor Code sections 2800 and 2802;

- 1 40. For actual, consequential and incidental losses and damages, according to
2 proof;
3 41. For the imposition of civil penalties and/or statutory penalties;
4 42. For punitive damages and/or exemplary damages according to proof at
5 trial;
6 43. For reasonable attorneys' fees and costs of suit incurred herein; and
7 44. For such other and further relief as the court may deem just and proper.

8 **As to the Eighth Cause of Action**

- 9 45. That the Court declare, adjudge and decree that Defendants violated
10 California Labor Code sections 1198 by willfully failing to provide suitable seating as
11 required by the Wage Order to Plaintiff and the other class members;
12 46. For such general and special damages as may be appropriate;
13 47. For reasonable attorneys' fees and costs of suit incurred herein pursuant
14 to California Labor Code section 1194(a);
15 48. For liquidated damages pursuant to California Labor Code section 1194.2;
16 and
17 49. For such other and further relief as the court may deem just and proper.

18 **As to the Ninth Cause of Action**

- 19 50. That the Court declare, adjudge and decree that Defendants violated
20 California Labor Code sections 551 and 552 by failing to provide one day's rest in
21 seven to Plaintiff and the other class members;
22 51. For such general and special damages as may be appropriate;
23 52. For pre-judgment interest on any unpaid compensation from the date such
24 amounts were due;
25 53. For reasonable attorneys' fees and costs of suit incurred herein pursuant
26 to California Labor Code section 1194(a);
27 54. For liquidated damages pursuant to California Labor Code section 1194.2;
28 and

1 55. For such other and further relief as the court may deem just and proper.

2 **As to the Tenth Cause of Action**

3 56. That the Court declare, adjudge and decree that Defendants violated
4 California Labor Code section 2698, *et seq.*, the PAGA, for civil penalties pursuant to
5 Defendants' violations of Labor Code §§ 201, 202, 203, 204, 218.5, 221, 226(a), 226.3,
6 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800, 2802 and
7 the IWC Wage Orders;

8 57. Upon the Cause of Action, for costs and attorneys' fees pursuant to Labor
9 Code Sections 210, 1194, and 2699, and any other applicable statute; and

10 58. For such other and further relief as the Court may deem just and proper.

11 **As to the Eleventh Cause of Action**

12 59. That the Court declare, adjudge and decree that Defendants violated
13 California Business and Professions Code sections 17200, *et seq.* by failing to provide
14 Plaintiff and the other class members all overtime compensation due to them, failing
15 to provide all meal and rest periods to Plaintiff and the other class members, failing to
16 pay at least minimum wages to Plaintiff and the other class members, failing to pay
17 Plaintiff's and the other class members' wages timely as required by California Labor
18 Code section 201, 202.

19 60. For restitution of unpaid wages to Plaintiff and other class members and
20 all pre-judgment interest from the day such amounts were due and payable;

21 61. For the appointment of a receiver to receive, manage and distribute any
22 and all funds disgorged from Defendants and determined to have been wrongfully
23 acquired by Defendants as a result of violation of California Business and Professions
24 Code sections 17200, *et seq.*;

25 62. For reasonable attorneys' fees and costs of suit incurred herein pursuant
26 to California Code of Civil Procedure section 1021.5;

27 63. For injunctive relief to ensure compliance with this section, pursuant to
28 California Business and Professions Code sections 17200, *et seq.*; and

1 64. For such other and further relief as the court may deem just and proper.
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3 Dated: October 12, 2020

JUSTICE LAW CORPORATION

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5 By: 
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Douglas Han

Shunt Tatavos-Gharajeh

Areen Babajanian

Attorneys for Plaintiff
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EXHIBIT 1



August 6, 2020

BY U.S. EMAIL/ELECTRONIC SUBMISSION

PAGAfilings@dir.ca.gov

State of California

Labor & Workforce Development Agency

800 Capitol Mall, MIC-55

Sacramento, California 95814

Re: NULAIID FOODS, INC.

Dear Representative:

We have been retained to represent Adedeji Adejobi against Nulaid Foods, Inc. (including any and all affiliates, managers, members, subsidiaries, and parents, and their shareholders, officers, directors, and employees), any individual, owner, officer and managing agent, DOES 1-10 as an "Employer" or person acting on behalf of an "Employer" pursuant to California Labor Code section 558.1, and DOES 11-20¹ for violations of California wage-and-hour laws (hereinafter collectively referred to as "NULAIID").

Mr. Adejobi is pursuing his California Labor Code section 2698, *et seq.*, the Private Attorneys General Act of 2004 ("PAGA") claim on a representative basis. Therefore, Mr. Adejobi may seek penalties and wages for violations of the Labor Code on behalf of the State of California and aggrieved employees, which are recoverable under PAGA. This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3.

Nulaid Foods, Inc. is a California corporation located at 200 West Fifth Street, Ripon, California 95366.

NULAIID employed Mr. Adejobi as an hourly-paid non-exempt Mechanic within one year of the date of this letter (until on or about August 9, 2019) in the State of California. NULAIID directly controlled the wages, hours and working conditions of Mr. Adejobi's employment.

The "aggrieved employees" that Mr. Adejobi may seek penalties on behalf of are all current and former hourly-paid or non-exempt employees (whether hired directly or through staffing agencies or labor contractors) of NULAIID within the State of California.

¹ Mr. Adejobi does not know the true names or capacities, whether individual, partner or corporate, of DOES 11 through 20, inclusive, and for that reason, said DOES are designated under such fictitious names. Mr. Adejobi will amend this notice when the true names and capacities are known. Mr. Adejobi is informed and believes that each DOE was responsible in some way for the matters alleged herein and proximately caused Mr. Adejobi and other current and former aggrieved employees to be subject to the illegal employment practices, wrongs and injuries complained of herein.

LWDA

August 6, 2020

Page 2 of 6

NULAID failed to properly pay its hourly-paid or non-exempt employees for all hours worked, failed to properly provide or compensate minimum and overtime wages and for meal and rest breaks, failed to issue compliant wage statements and failed to reimburse for all necessary business-related costs and expenses, thus resulting in other Labor Code violations as stated below.

Pursuant to *Huff v. Securitas Security Services*, 23 Cal. App. 5th 745, 751 (2018), an employee who brings a representative action and was affected by at least one of the violations alleged in the complaint has standing to pursue penalties on behalf of the state not only for that violation, but for violations affecting other employees as well. Accordingly, Mr. Adejobi has standing to pursue penalties on behalf of the state for violations affecting all the aggrieved employees at NULAID, regardless of their classification, job title, locations, or whether they were hired directly or through a labor contractor or staffing agency.

NULAID has violated and/or continues to violate, among other provisions of the California Labor Code and applicable wage law, California Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

California Labor Code sections 510, 1194, and 1198 require employers to pay at least minimum wage for all hours worked, pay time-and-a-half, or double time overtime wages, and make it unlawful to work employees for hours longer than eight hours in one day and/or over forty hours in one week without paying the premium overtime rates. During the relevant time period, Mr. Adejobi and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. NULAID failed to compensate Mr. Adejobi and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift and during meal breaks. NULAID also failed to include non-discretionary bonuses and incentives in Mr. Adejobi and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Adejobi and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

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California Labor Code sections 226.7 and 512 require employers to pay an employee one additional hour of pay at the employee's regular rate for each workday that a meal or rest break is not provided. During the relevant time period, NULAIID routinely required Mr. Adejobi and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with NULAIID policies and expectations, and meet production goals. NULAIID also required Mr. Adejobi and other aggrieved employees to maintain their radios on them during their meal and rest breaks, thereby deriving them of off-duty breaks. Moreover, NULAIID failed to authorize and permit Mr. Adejobi and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, NULAIID failed to compensate aggrieved employees all the premium wages they were owed.

California Labor Code section 551 states "[e]very person employed in any occupation of labor is entitled to one day's rest therefrom in seven." Section 552 further states "[n]o employer of labor shall cause his employees to work more than six days in seven." NULAIID required Mr. Adejobi and other aggrieved employees to work seven days in a row or more without one day's rest.

California Labor Code section 201 requires that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. California Labor Code section 202 requires that if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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. California Labor Code section 203 provides that if an employer willfully fails to pay, without abatement or reduction, in accordance with Labor Code sections 201, 201.3, 201.5, 201.6, 201.8, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. During the relevant time period, NULAIID failed to pay Mr. Adejobi and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums arising from excluding certain payments from the regular rate, and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

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California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, NULALD failed to pay Mr. Adejobi and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums arising from excluding certain payments from the regular rate, and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, NULALD did not provide Mr. Adejobi and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from NULALD were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Adejobi and other aggrieved employees, (2) total hours worked by Mr. Adejobi and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Adejobi and other aggrieved employees (4) all deductions for Mr. Adejobi and other aggrieved employees, (5) net wages earned by Mr. Adejobi and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Adejobi and other aggrieved employees are paid, (7) the name of the aggrieved employee and only 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 Mr. Adejobi and other aggrieved employees.

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California Labor Code section 558 allows recovery of penalties. (a) Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. Mr. Adejobi and other aggrieved employees have been denied their wages and premium wages and, therefore, are entitled to penalties.

California Labor Code sections 1174(d) requires an employer to keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept with rules established for this purpose by the commission, but in any case, shall be kept on file for not less than two years. During the relevant time period, NULAD failed to keep accurate and complete payroll records showing the hours worked daily and the wages paid, to Mr. Adejobi and other aggrieved employees.

California Labor Code sections 1194, 1197 and 1197.1 provide the minimum wage to be paid to employees, and the payment of a lesser wage than the minimum so fixed is unlawful. During the relevant time period, NULAD did not provide Mr. Adejobi and other aggrieved employees with the minimum wages to which they were entitled despite constructive and actual knowledge of off-the-clock work, including pre- and post-shift and during meal breaks.

California Labor Code sections 2800 and 2802 require an employer to reimburse its employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. During their employment, Mr. Adejobi and other aggrieved employees incurred necessary business-related expenses and costs that were not fully reimbursed by NULAD, including for using their personal cellular phones for work purposes.

We believe that Mr. Adejobi and other current and former California-based hourly-paid or non-exempt employees are entitled to penalties and wages as allowed under California Labor Code section 2698, *et seq.* for violations of Labor Code sections 201, 202, 203, 204, 218.5, 221, 226(a), 226.3, 226.7, 510, 512(a), 551, 552, 558, 1174(d), 1194, 1197, 1197.1, 1198, 2800 and 2802, and the IWC Wage Orders.

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California Labor Code section 2699.3 requires that a claimant send a certified letter to the employer in questions and the California Labor & Workforce Development Agency setting forth the claims, and the basis for the claims, thereby giving the California Labor & Workforce Development Agency an opportunity to investigate the claims and/or take any action it deems appropriate.

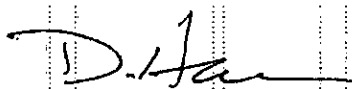
The purpose of this letter is to satisfy the requirement created by California Labor code section 2699 prior to seeking penalties allowed by law for the aforementioned statutory violations. We look forward to determining whether California Labor & Workforce Development Agency intends to take any action in reference to these claims. We kindly request that you respond to this notice according to the time frame contemplated by the California Labor Code.

Mr. Adejobi will seek these penalties and wages on his own behalf and on behalf of other similarly situated California-based hourly-paid or non-exempt employees of NULOID within one year of the date of this letter, as allowed by law.

If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter and the noble cause you advance each and every day.

Very truly yours,

JUSTICE LAW CORPORATION

A handwritten signature in black ink, appearing to read "D. Han", is written over a series of vertical dotted lines.

Douglas Han, Esq.

CC: (By Certified U.S. Mail Only):

David K. Crockett
c/o Nulaid Foods, Inc.
200 West Fifth Street
Ripon, California 95366
Agent for Service of Process for Nulaid Foods, Inc.



www.koullaw.com

Nazo@Koullaw.com

P (213) 761 – 5484

F (818) 561 – 3938

3435 WILSHIRE BLVD

SUITE 1710

LOS ANGELES, CA 90010

August 7, 2020

Via E-filing:

California Labor & Workforce
Development Agency
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Via Certified U.S. Mail:

David K. Crockett
c/o Nulaid Foods, Inc.
200 West Fifth Street
Ripon, California 95366

David K. Crockett
c/o Nulaid-Thayer, LLC
200 West Fifth Street
Ripon, California 95366

Michael West
c/o Thayer Food Products, LLC
501 9th Street
Modesto, CA 95354

Re: PAGA Notice Pursuant to California Labor Code §2699
Claimant: Adedeji Adejobi
Employers: Nulaid Foods, Inc., Nulaid-Thayer, LLC, and Thayer
Food Products, LLC

Dear Sir or Madam:

Adedeji Adejobi has retained Nazo Koulloukian, Esq. of the KOUL LAW FIRM,
to represent them, and all other aggrieved employees, for wage and hour claims

against their former employers, Nulaid Foods, Inc., Nulaid-Thayer, LLC, and Thayer Food Products, LLC (collectively hereafter "Employer.")

Employer requires employees to work under conditions that violate California wage and hour laws, including underpaying low-wage earners and depriving them of required, legally compliant seating, and meal and rest breaks. This PAGA representative action would represent hundreds of current and former employees. Claimant worked for Employer until August 9, 2019.

This letter will hereby serve as notice to the above mentioned Employers pursuant to Cal. Lab. Code §2699.3.

Employer has violated, and/or has caused to be violated, several Labor Code provisions and it is therefore liable for civil penalties under Cal. Labor Code §2698 *et seq.* We request that your agency investigate the claims alleged below, or permit claimant to seek civil penalties under the Private Attorney General Act ("PAGA"), Labor Code §2698 *et seq.*, on behalf of the Labor and Workforce and development Agency ("LWDA") and the State of California in a representative action. This letter will serve as notice of these allegations pursuant to Cal. Lab. Code §2699.3.

Failure To Provide Suitable Seating

(Lab. Code section 1198 and Wage Order 7-2001, section 14)

Labor Code section 1198 states, in pertinent part, "The employment of any employee... under conditions of labor prohibited by the [Wage Order] is unlawful."

Section 14 of the applicable Wage Order provides that:

(A) All working employees shall be provided with suitable seats when the nature of the work reasonably permits the use of seats.

(B) When employees are not engaged in the active duties of their employment and the nature of the work requires standing, an adequate number of suitable seats shall be placed in reasonable proximity to the work area and employees shall be permitted to use such seats when it does not interfere with the performance of their duties.

At all relevant times, Employer failed to provide Claimant and aggrieved employees with suitable seating during their employment as required by section 14 of the applicable Wage Order. For example, Claimant and other aggrieved employees were not provided with seating during shifts in which they worked at the work facilities, as refrigeration leads, mechanics, production, maintenance employees or other positions which would reasonably permit the use of seating. Upon information and belief, the work performed at the work facilities including ensuring all utility equipment was working properly, checking boilers, starting up all equipment, and other common tasks that can be performed while seated and the location of the tasks to be performed made it feasible to do so while seated. Moreover, Claimant alleges upon information and belief that the work performed by in production and maintenance, had common tasks which could be performed while seated and the location of the tasks to be performed made it feasible to do so while seated.

Accordingly, Claimant, on behalf of himself and aggrieved employees, will pursue civil penalties under Labor Code §2698 *et seq.*, and all available remedies to the extent allowed by law for the alleged violations.

Failure to Pay For All Hours Worked, Including Overtime Hours Worked

(Cal. Labor Code §§218, 510, 1194, 1197, 1198, 2699 *et seq.*)

Wage Order 4 defines “hours worked” as “the time during which an employee is subject to the control of an employer, and including all the time the employee is suffered or permitted to work, whether or not required to do so.” When employees like Claimant and their coworkers earning wages at or near minimum wage do not receive payment for all hours worked, including time shaved from their timecards due to employer rounding, uncompensated off-the clock security bag checks, and time spent under Employer’s control during unpaid meal periods, the result is that they are earning less than the statutory minimum wages for all hours worked. Employer has been engaged in many unlawful employment practices which resulted in underpayment for hours worked each pay period, including overtime hours worked, as more fully set forth below:

Pre- and Post-Shift Work

Claimant and aggrieved employees frequently worked off the clock and were routinely subjected to periods wherein they were under the Employer’s control but not compensated for their time. In addition to requiring employees to spend a

meaningful amount of their unpaid meal period walking from the timeclock to the break room and vice versa.

Employer has violated Labor Code §§510 1194, and 1198, and Wage Order 4. Employer is liable for civil penalties pursuant to Labor Code §2698 *et seq.*

Work Performed During Unpaid Meal Periods

As more fully set forth below, Employer failed to permit Claimant and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. Claimant and aggrieved employees were required to spend time walking to and from the time clock and break room, and were required to line up early to make sure they clocked back in on-time. All this time spent under Employer’s control was uncompensated and unlawful. Claimant and aggrieved employees have been employed under conditions prohibited by the wage order, and thus Employer has violated §1198. Employer is liable for civil penalties pursuant to Labor Code § 2698 *et seq.*

Time Shaving and Rounding

Employer rounds employee timecard entries. Although Employer uses a high-tech timekeeping system that could easily capture the exact minute employees present for work, employees were not paid for this rounded time.

The California Supreme Court has rejected the *de minimis* argument frequently echoed by employers, confirming that employees are entitled to payment for all hours (and minutes) worked. Indeed, California law will permit a “rounding policy only ‘if the rounding policy is fair and neutral on its face and ‘it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked.’” (*Troester v. Starbucks Corporation*, (2018) 5 Cal. 5th 829, 846, citing *See’s Candy*, 210 Cal.App.4th at p. 907.) The policy utilized by Employer is neither fair nor neutral, as it consistently shaved time from Claimant and aggrieved employees’ hours worked, resulting in a failure to compensate Claimant and aggrieved employees for all hours and overtime hours worked.

Failure to Pay Wages- Required Minimum Wage

Employer failed to pay Claimants and aggrieved employees for all hours worked as a result of Employer’s practice of requiring extensive walking time to and from the

breakroom, rounding timecard entries, and requiring off the clock work. Based on Employer's unlawful conduct described above, and because Claimant and the aggrieved employees were paid at or near minimum wage, Employer's failure to pay for all hours worked, including overtime, resulted in a payment of less than the minimum wage for all hours worked, in violation of Labor Code §1197, 1197.1, 1199 and Wage Order 4-2001 4(B). Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.* During the relevant time period, Mr. Adejobi and other aggrieved employees routinely worked in excess of 8 hours in a day and 40 hours in a week. Employer failed to compensate Mr. Adejobi and other aggrieved employees for all hours worked and performing off-the-clock work, including pre- and post-shift and during meal breaks. NULAD also failed to include non-discretionary bonuses and incentives in Mr. Adejobi and other aggrieved employees' regular rate of pay for purposes of overtime compensation. Therefore, Mr. Adejobi and other aggrieved employees were entitled to receive certain wages for overtime compensation, but they were not paid for all overtime hours worked.

Failure to Pay Overtime Wages

Employer has required Claimant and others to work hours in excess of eight hours in a day and forty in a week, but has not paid these employees overtime compensation at one and one-half times the regular rate of pay in violation of Labor Code §510. Further, Claimants and employees have been required to work in excess of 12 hours in one day without being compensated at a rate of twice the regular rate of pay. §510. Because Employer shaves time from employee timecards due to rounding, requiring off the clock travel to break rooms, and off the clock security bag checks, Claimant and aggrieved employees have been denied overtime pay. Claimant and others have been denied "the unpaid balance of the full amount of this... overtime compensation" as required by Cal. Labor Code. §1194. Employer is liable for civil penalties pursuant to Labor Code §2699 *et seq.*

Failure to Provide Timely, Uninterrupted 30- Minute Meal Breaks

Cal. Labor Code §§226, 226.7, 512, 558, 2699 *et seq.*

During Claimant's employment, Employer failed to maintain a compliant meal period policy and practice. Employer failed to provide all of its hourly employees with their right to take an off-duty meal periods. Labor Code §512 provides, "[a]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes..." Labor Code §226.7(a) provides, "[n]o employer shall require an

employee to work during any meal... period mandated by an applicable order of the Industrial Welfare Commission.” Paragraph 11(A) of the Wage Orders provides, in pertinent part, “[u]nless an employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an ‘on duty’ meal period and counted as time worked.”

During the relevant time period, Employer routinely required Mr. Adejobi and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with Employer policies and expectations, and meet production goals. Employer also required Mr. Adejobi and other aggrieved employees to maintain their radios on them during their meal and rest breaks, thereby deriving them of off-duty breaks. Moreover, Employer failed to authorize and permit Mr. Adejobi and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, Employer failed to compensate aggrieved employees all the premium wages they were owed.

Meal periods were also often late and under thirty minutes. Pursuant to *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 273 P.3d 513 (2012), a first meal period must begin no later than the start of an employee's sixth hour of work.

Employer failed to permit claimants and others to take timely, off-duty, meal breaks of “not less than 30 minutes” for each five consecutive hours of work in violation of Labor Code §§226.7 and 512. As a derivative claim, claimants allege that pay statements were inaccurate, failing to include required meal period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Provide Rest Breaks

Cal. Labor Code §§226, 226.7, 512, 2698 *et seq.*

Employer has failed to maintain a compliant rest period policy and practice that provides its employees with off-duty rest periods as required by California law. Employer is required to authorize or permit all of its hourly employees to take at least a ten minute rest period in which they were relieved of all duties, for every 4 hours of work, or major fraction thereof, as required by Cal. Lab. Code §226.7, §512 and Wage Order 4-2001 12(A).

Claimant's rest breaks were frequently interrupted and under 10 minutes. During the relevant time period, Employer routinely required Mr. Adejobi and other aggrieved employees to work through, interrupt, cut short, and/or delay their meal and rest breaks to comply with Employer policies and expectations, and meet production goals. Employer also required Mr. Adejobi and other aggrieved employees to maintain their radios on them during their meal and rest breaks, thereby depriving them of off-duty breaks. Moreover, Employer failed to authorize and permit Mr. Adejobi and other aggrieved employees to take the requisite number of meal and rest breaks, including second meal breaks and third rest breaks, when working shifts exceeding 10 hours in length. Despite these facts, Employer failed to compensate aggrieved employees all the premium wages they were owed.

Employer failed to pay Claimant and similarly situated employees all premium compensation (one hour of pay at the employee's regular rate of pay for missed or untimely rest periods) mandated by Labor Code §226.7 (b) for these missed rest periods. As a derivative claim, Claimant also alleges that their pay statements were inaccurate, failing to include required rest period penalties, thus failing the requirements of Labor Code §226(a). As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et seq.*

Failure to Timely Pay All Wages Owed

(Cal. Lab. Code §§201-203, and 2698 *et seq.*)

Failure to Pay Wages Due Upon Termination

Labor Code section 201 states, in pertinent part, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately."

Labor Code section 202 states, in pertinent part, "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 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."

Labor Code section 203 provides that an employee's wages shall continue as a penalty from when they first become due at the same rate until paid for up to 30

days when an employer willfully fails to timely pay all earned and unpaid wages in accordance with Labor Code section 201 or 202.

Employer willfully failed to pay Claimant and aggrieved employees all wages due and owing upon separation of employment including, but not limited all earned regular and overtime wages. By furnishing Claimant and other separated aggrieved employees with a final check that failed to include all earned and owed wages, Employer violated Labor Code sections 201 and/or 202.

During the relevant time period, Employer failed to pay Mr. Adejobi and other aggrieved employees all wages, including for uncompensated off-the-clock work, unpaid overtime premiums arising from excluding certain payments from the regular rate, and premium wages for failing to provide legally mandated meal and rest breaks, due to them within any time period specified by California Labor Code sections 201 and 203 and therefore is liable under California Labor Code section 203.

Failure to Pay All Wages Owed Twice Per Month

Employer was required to pay Claimant and employee all wages earned twice during each calendar month pursuant to Labor Code §204(a). Employer failed to pay all wages earned to employees as a result of the unlawful employment policies and practices discussed herein. As a result of these practices, Employees were underpaid for hours worked, including overtime and penalty wages, and this underpayment resulted in a failure to pay all wages owed twice per month.

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. During the relevant time period, Employer failed to pay Mr. Adejobi and other aggrieved employees all wages due to them, including for uncompensated off-the-clock work, unpaid overtime premiums arising from excluding certain payments from the

regular rate, and premium wages for failing to provide legally mandated meal and rest breaks within any time period specified by California Labor Code section 204.

Failure to Provide Accurate Itemized Wage Statements

(Cal. Labor Code §§ 226, 1174, 2699 *et seq*)

Employer knowingly and intentionally failed to provide timely, accurate, itemized wage statements to Claimant and the aggrieved employees, and maintain accurate records, in accordance with Labor Code §§ 226 and 1174. As depicted in the sample wage statement, below, statements have not accurately reflected actual gross wages earned, including overtime and meal/rest premiums, and total hours.

Moreover, Claimant's final wage statement was issued to him by Employer and failed to list the full name of the legal entity that was the employer by just stating "Nulaid Foods" without actually identifying any of the entities of the Employer fully consisting of Nulaid Foods, Inc., Nulaid-Thayer, LLC, and Thayer Food Products, LLC.

California Labor Code section 226 requires employers to make, keep and provide complete and accurate itemized wage statements to their employees. During the relevant time period, Employer did not provide Mr. Adejobi and other aggrieved employees with complete and accurate itemized wage statements. The wage statements they received from Employer were in violation of California Labor Code section 226(a). The violations include, but are not limited to, the failure to include (1) gross wages earned by Mr. Adejobi and other aggrieved employees, (2) total hours worked by Mr. Adejobi and other aggrieved employees, (3) the number of piece-rate units earned and any applicable piece rate by Mr. Adejobi and other aggrieved employees (4) all deductions for Mr. Adejobi and other aggrieved employees, (5) net wages earned by Mr. Adejobi and other aggrieved employees, (6) the inclusive dates of the period for which Mr. Adejobi and other aggrieved employees are paid, (7) the name of the aggrieved employee and only 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 Mr. Adejobi and other aggrieved employees.

Such failures caused injury to Claimant and others, by, among other things impeding them from knowing the total hours worked and the amount of wages to which they are and were entitled. Employer knowingly and intentionally failed to

itemize the gross wages earned, net wages earned, and total hours worked. Employer is liable for civil penalties pursuant to Labor Code § 2699 *et seq.*

Day of Rest Violations

Cal. Lab. Code §§551 and 552 require that employers provide employees with ‘one day’s rest in seven.’ The California Supreme Court recently confirmed that “[a] day of rest is guaranteed for each workweek.” (*Mendoza v. Nordstrom, Inc.* (2017) 2 Cal.5th 1074, 1078.) However, Claimant and his coworkers were frequently scheduled to work and did work seven days in a workweek. This excessive scheduling is in clear violation of California’s day of rest laws. Claimant will testify, and his personnel records reflect, that he was denied the required day or rest mandated by the Labor Code. Claimant further observed his coworkers similarly being denied one day’s rest in seven. As a result of these violations, Employer is liable for civil penalties pursuant to Cal. Labor Code §558 and §2698 *et. seq.*

Failure to Reimburse for Required Business Expenses

(Cal. Labor Code §§1198, 2802, 2699 *et seq.*)

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

Claimant and aggrieved employees are required to use their personal cell phones for work related communications, although Employer does not reimburse them in any way for the expense of their personal cell phone use as required by the Labor Code. Moreover, Claimant and aggrieved employees were required to buy their own personal tools and replacement parts, such as blades. Claimant explains that he would ask Employer for replacements, but they were not provided. Claimant would spend about \$100 on blades and other tools every two weeks. Accordingly, Employers are liable for civil penalties under PAGA §2699 *et seq.*

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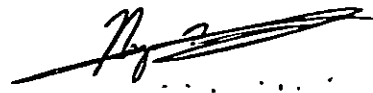
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Conclusion

Employer has violated a number of California wage and hour laws. Claimant respectfully requests that the agency investigate the above allegations and hereby provides notice of the allegations pursuant to PAGA's provisions. Alternatively, Claimant requests that the agency inform them if it does not intend to investigate these violations so that they may pursue their claims as a representative action in civil court.

Sincerely,

A handwritten signature in black ink, appearing to read 'N. Koulloukian', with a long horizontal stroke extending to the right.

Nazo Koulloukian, Esq.
Attorney for Claimant

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**PROOF OF SERVICE
1013A(3) CCP**

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action. My business address is 751 N. Fair Oaks Avenue, Suite 101, Pasadena, CA 91103 and my electronic service address is dcseri@justicelawcorp.com

On October 26, 2020, I served the foregoing document described as

**COMPLAINT FOR PENALTIES FOR VIOLATION OF LABOR CODE § 2698 *et seq.*
(PRIVATE ATTORNEYS GENERAL ACT OF 2004)**

for the following case: **Adejobi v. Nulaid Foods, Inc., et al.**
LWDA/Court Case No.: **LWDA Case No.: CM- 801642-20**
 Court Case No.: STK-CV-UOE-2020-0008625
 San Joaquin County Superior Court

on interested parties in this action by electronically submitting as follows:

State of California
Labor & Workforce Development Agency
800 Capitol Mall, MIC-55
Sacramento, California 95814

[X] BY ELECTRONIC SUBMISSION

Pursuant to California Senate Bill No. 836, I caused the documents described above to be electronically submitted by and through the procedure stated on the website of the State of California Labor and Workforce Development Agency.

[X] STATE

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on October 26, 2020, at Pasadena, California.



Demiah Cseri