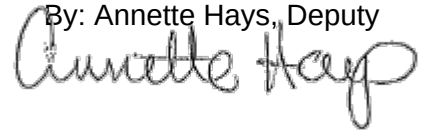


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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

BERTHA ZAMORA, as an aggrieved
employee pursuant to the Private Attorneys
General Act ("PAGA"), on behalf of the
State of California and other aggrieved
employees,

Plaintiff,

vs.

FOX FACTORY, INC., a California
corporation; FOX FACTORY HOLDING
CORP., a Delaware corporation; and DOES
1 through 10, inclusive,

Defendants.

Case No.: 20CV02502

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

(1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

1 Plaintiff Bertha Zamora, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on September 25, 2020, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ persons in this
3 county, and employed Plaintiff in this county, and thus a substantial portion of the transactions
4 and occurrences related to this action occurred in this county.

5 5. California Labor Code sections 2698, *et seq.*, the “Labor Code Private
6 Attorneys General Act of 2004” (“PAGA”), authorize aggrieved employees to sue as private
7 attorneys general their current or former employers for various civil penalties for violations of
8 various provisions in the California Labor Code.

9 THE PARTIES

10 6. Plaintiff Bertha Zamora is a resident of Watsonville, in Santa Cruz County,
11 California. Defendants employed Plaintiff as an hourly paid, non-exempt Assembler from
12 approximately April 2013 to April 10, 2020. Plaintiff worked for Defendants at their
13 Watsonville, California location. During her employment, Plaintiff typically worked eight (8)
14 hours or more per day, and five (5) days or more per week. At the time her employment
15 ended, Plaintiff earned approximately \$13.00 per hour. Her job duties included, without
16 limitation, assembling bumper parts for bicycles, motorcycles, and snowmobiles.

17 7. On information and belief, Defendants required some employees, including
18 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement at the time of
19 their hire or during their employment. On further information and belief, Defendants’ dispute
20 resolution policy and/or arbitration agreement was and is both procedurally and substantively
21 unconscionable. Specifically, Defendants presented new hires with an Acknowledgement of
22 Arbitration (“Arbitration Agreement”) during the onboarding process, which had to be
23 reviewed and signed immediately. In fact, upon information and belief, the Arbitration
24 Agreement was one of several documents presented to new employees for signature during the
25 orientation process, including an Employee Manual Acknowledgement (“Reconcimiento del
26 Manual”), Safety Guides Acknowledgment (“Reconcimiento de Guías de Seguridad”), and
27 Meal Period Waiver Form, among other documents. Also, employees did not have a
28 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was

1 provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time
2 they were hired, along with other on-boarding documents. Further, Defendants did not set
3 forth in the agreement or otherwise provide employees with the rules which will govern the
4 arbitration, instead forcing employees to seek this information out on their own.

5 8. FOX FACTORY, INC. was and is, upon information and belief, a California
6 corporation, and at all times hereinafter mentioned, an employer whose employees are
7 engaged throughout this county and the State of California.

8 9. FOX FACTORY HOLDING CORP. was and is, upon information and belief, a
9 Delaware corporation, and at all times hereinafter mentioned, an employer whose employees
10 are engaged throughout this county and the State of California.

11 10. Plaintiff is unaware of the true names or capacities of the Defendants sued
12 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
13 amend the complaint and serve such fictitiously named Defendants once their names and
14 capacities become known.

15 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
16 were the partners, agents, owners, or managers of FOX FACTORY, INC. and FOX
17 FACTORY HOLDING CORP. at all relevant times.

18 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
19 acts and omissions alleged herein was performed by, or is attributable to, FOX FACTORY,
20 INC.; FOX HOLDING CORP.; and/or DOES 1 through 10 (collectively, "Defendants" or
21 "FOX"), each acting as the agent, employee, alter ego, and/or joint venturer of, or working in
22 concert with, each of the other co-Defendants and was acting within the course and scope of
23 such agency, employment, joint venture, or concerted activity with legal authority to act on
24 the others' behalf. The acts of any and all Defendants were in accordance with, and represent,
25 the official policy of Defendants.

26 13. At all relevant times, Defendants, and each of them, ratified each and every act
27 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
28 and abetted the acts and omissions of each and all the other Defendants in proximately causing

1 the damages herein alleged.

2 14. Plaintiff is informed and believes, and thereon alleges, that each of said
3 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
4 omissions, occurrences, and transactions alleged herein.

5 14. Under California law, Defendants are jointly and severally liable as employers
6 for the violations alleged herein because they have each exercised sufficient control over the
7 wages, hours, working conditions, and employment status of Plaintiff and other non-party
8 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
9 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
10 of employment, determined their rate of pay, and maintained their employment records.
11 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
12 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a
13 common-law employment relationship. As joint employers of Plaintiff and other non-party
14 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
15 available to Plaintiff and other non-party Aggrieved Employees under the law.

16 15. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
17 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
18 non-party Aggrieved Employees because Defendants have:

- 19 (a) jointly exercised meaningful control over the work performed by
20 Plaintiff and other non-party Aggrieved Employees;
- 21 (b) jointly exercised meaningful control over Plaintiff’s and other non-party
22 Aggrieved Employees’ wages, hours, and working conditions, including
23 the quantity, quality standards, speed, scheduling, and operative details
24 of the tasks performed by Plaintiff and other non-party Aggrieved
25 Employees;
- 26 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
27 perform work which is an integral part of Defendants’ businesses; and
- 28 (d) jointly exercised control over Plaintiff and other non-party Aggrieved

1 Employees as a matter of economic reality in that Plaintiff and other
2 non-party Aggrieved Employees were dependent on Defendants, who
3 shared the power to set the wages of Plaintiff and other non-party
4 Aggrieved Employees and determined their working conditions, and
5 who jointly reaped the benefits from the underpayment of their wages
6 and noncompliance with other statutory provisions governing their
7 employment.

8 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
9 there has existed a unity of interest and ownership between Defendants such that any
10 individuality and separateness between the entities has ceased.

11 17. FOX FACTORY, INC.; FOX FACTORY HOLDING CORP.; and DOES 1
12 through 10 are therefore alter egos of each other.

13 18. Adherence to the fiction of the separate existence of Defendants would permit
14 an abuse of the corporate privilege, and would promote injustice by protecting Defendants
15 from liability for the wrongful acts committed by them under the name FOX.

16 19. Plaintiff further alleges, upon information and belief, that Defendants FOX
17 FACTORY, INC. and FOX FACTORY HOLDING CORP. are alter egos of each other for the
18 following reasons:

- 19 (a) Per FOX FACTORY HOLDING CORP.'s SEC 10-K filing for 2019¹,
20 FOX FACTORY, INC. is listed as FOX FACTORY HOLDING
21 CORP.'s operating subsidiary;
22 (b) On the California Secretary of State's website
23 (<https://businesssearch.sos.ca.gov/>), FOX FACTORY, INC. and FOX
24 FACTORY HOLDING CORP. share the same entity address, "6634
25 Highway 53, Braselton, GA 30517;"
26 (c) On the California Secretary of State's website

27 ¹ 10-K Annual Report 03/03/2020, "SEC Filings | Fox Factory Holding Corp. –
28 Investor Relations," <https://investor.ridefox.com/financial-information/sec-filings/default.aspx>
(last accessed Nov. 16, 2020).

(<https://businesssearch.sos.ca.gov/>), FOX FACTORY, INC. and FOX FACTORY HOLDING CORP. share the same agent for service of process, “C T CORPORATION SYSTEM (C0168406);” and

(c) On information and belief, FOX FACTORY, INC. and FOX FACTORY HOLDING CORP. utilize the same standardized employment forms and issue the same employment policies.

PAGA REPRESENTATIVE ALLEGATIONS

15. Defendants design and manufacture suspension-related components for motorcycles, bicycles, off-road vehicles, and other specialty vehicles, including at least one manufacturing facility in Watsonville, California. Upon information and belief, Defendants maintain a single, centralized Human Resources (“HR”) department at their corporate headquarters in Braseltown, Georgia, which is responsible for the recruiting and hiring of new employees, and communicating and implementing Defendants’ company-wide policies, including timekeeping policies and meal and rest period policies, to employees throughout California.

16. In particular, Plaintiff and other non-party Aggrieved Employees, on information and belief, received the same standardized documents and/or written policies. Upon information and belief, the usage of standardized documents and/or written policies, including new-hire documents, indicate that Defendants dictated policies at the corporate level and implemented them company-wide, regardless of their employees’ assigned locations or positions. Upon information and belief, Defendants set forth uniform policies and procedures in several documents provided at an employee’s time of hire.

17. Upon information and belief, Defendants maintain a centralized Payroll department at their corporate headquarters in Braseltown, Georgia, which processes payroll for all non-exempt, hourly paid employees working for Defendants at their various locations and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based upon information and belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid employees in California, irrespective of their work locations.

1 Upon information and belief, Defendants process payroll for departing employees in the same
2 manner throughout the State of California, regardless of the manner in which each employee's
3 employment ends.

4 18. Defendants continue to employ non-exempt or hourly paid employees in
5 California.

6 19. Plaintiff is informed and believes, and thereon alleges, that at all times herein
7 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
8 and advisors knowledgeable about California labor and wage law, employment and personnel
9 practices, and about the requirements of California law.

10 20. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
11 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
12 were not recorded.

13 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
15 receive certain wages for overtime compensation and that they were not receiving certain
16 wages for overtime compensation.

17 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that other non-party Aggrieved Employees were entitled to be paid at a
19 regular rate of pay, and corresponding overtime rates of pay, that included as eligible income
20 all income derived from shift differential pay, incentive pay, nondiscretionary bonuses, and/or
21 other forms of compensation.

22 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
24 receive at least minimum wages for compensation and that they were not receiving at least
25 minimum wages for work that was required to be done off-the-clock. In violation of the
26 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
27 least minimum wages for work done off-the-clock.

28 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
3 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
4 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
5 not provided with all meal periods or payment of one (1) additional hour of pay at their
6 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
7 period.

8 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
9 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
10 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
11 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
12 and permitted to take a compliant rest period. In violation of the California Labor Code,
13 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
14 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
15 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
16 they were not authorized and permitted to take a compliant rest period.

17 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
19 receive complete and accurate wage statements in accordance with California law. In
20 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
21 were not provided complete and accurate wage statements.

22 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that they had a duty to maintain accurate and complete payroll records in
24 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
25 and intentionally failed to do so.

26 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
28 timely payment of wages during their employment. In violation of the California Labor Code,

1 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
2 including, but not limited to, overtime wages; minimum wages; meal and rest period premium
3 wages; and/or reporting time pay, within permissible time periods.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of all wages earned upon termination of employment. In violation of the
7 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
8 payment of all wages due, including, but not limited to, overtime wages; minimum wages;
9 meal and rest; all vested vacation pay; and/or reporting time pay, within permissible time
10 periods.

11 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
12 should have known that they had a duty to cover the costs and expenses other non-party
13 Aggrieved Employees incurred obtaining mandatory examinations and/or drug tests, but
14 willfully, knowingly, and intentionally failed to do so.

15 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
16 should have known that they were required to pay departing employees all vested vacation
17 wages that were owed to them at the end of their employment. In violation of the California
18 Labor Code, Defendants failed to pay Plaintiff and other non-party Aggrieved Employees all
19 vested vacation wages at the end of their employment, causing a forfeiture of vested vacation
20 wages.

21 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
23 receive one day's rest in seven. In violation of the California Labor Code, Defendants
24 required Plaintiff and other non-party Aggrieved Employees to work more than six
25 consecutive days without a day of rest, where the total hours worked exceeded 30 hours in any
26 week or six hours in any one day thereof.

27 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that other non-party Aggrieved Employees were entitled to be paid

1 reporting time pay when they reported to work for their scheduled shift but were put to work
2 for less than half of the regular schedule. In violation of the California Labor Code,
3 Defendants did not pay other non-party Aggrieved Employees all reporting time pay due.

4 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that other non-party Aggrieved Employees were entitled to receive
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive reimbursement of applicable
8 business-related expenses and costs incurred.

9 35. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that they had a duty to compensate other
11 non-party Aggrieved Employees for all hours worked, and that Defendants had the financial
12 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,
13 and falsely represented to other non-party Aggrieved Employees that they were properly
14 denied wages, all in order to increase Defendants' profits.

15 36. At all times herein set forth, PAGA provides that any provision of law under
16 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
17 assessed and collected by the LWDA for violations of the California Labor Code and
18 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
19 civil action brought on behalf of themselves and other current or former employees pursuant
20 to procedures outlined in California Labor Code section 2699.3.

21 37. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
22 person who was employed by the alleged violator and against whom one or more of the
23 alleged violations was committed."

24 38. Plaintiff and other current and former employees of Defendants are "aggrieved
25 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
26 or former employees and one or more of the alleged violations were committed against them.

27 39. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
28 employee, including Plaintiff, may pursue a civil action arising under PAGA after the

1 following requirements have been met:

- 2 (a) The aggrieved employee shall give written notice by online filing
3 (hereinafter "Employee's Notice") to the LWDA and by certified mail
4 to the employer of the specific provisions of the California Labor Code
5 alleged to have been violated, including the facts and theories to support
6 the alleged violations.
- 7 (b) An aggrieved employee's notice filed with the LWDA pursuant to
8 2699.3(a) and any employer response to that notice shall be
9 accompanied by a filing fee of seventy-five dollars (\$75).
- 10 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
11 employer and the aggrieved employee by certified mail that it does not
12 intend to investigate the alleged violation within sixty (60) calendar
13 days of the postmark date of the Employee's Notice. Upon receipt of
14 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
15 five (65) calendar days of the postmark date of the Employee's Notice,
16 the aggrieved employee may commence a civil action pursuant to
17 California Labor Code section 2699 to recover civil penalties in addition
18 to any other penalties to which the employee may be entitled.

19 40. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
20 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
21 provision other than those listed in Section 2699.5 after the following requirements have been
22 met:

- 23 (a) The aggrieved employee or representative shall give written notice by
24 online filing to the LWDA and by certified mail to the employer of the
25 specific provisions of the California Labor Code alleged to have been
26 violated (other than those listed in Section 2699.5), including the facts
27 and theories to support the alleged violation.
- 28 (b) An aggrieved employee's notice filed with the LWDA pursuant to

2699.3(c) and any employer response to that notice shall be accompanied by a filing fee of seventy-five dollars (\$75).

(c) The employer may cure the alleged violation within thirty-three (33) calendar days of the postmark date of the notice. The employer shall give written notice by certified mail within that period of time to the aggrieved employee or representative and the agency if the alleged violation is cured, including a description of actions taken, and no civil action pursuant to Section 2699 may commence. If the alleged violation is not cured within the 33-day period, the employee may commence a civil action pursuant to Section 2699.

41. On September 25, 2020, Plaintiff provided written notice by online filing to the LWDA and by certified mail to Defendants of the specific provisions of the California Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff PAGA Case Number LWDA-CM-807691-20. A true and correct copy of Plaintiff's written notice to the LWDA and Defendants dated September 25, 2020, is attached hereto as "Exhibit 1."

42. As of the filing date of this complaint, over 65 days have passed since Plaintiff sent the initial LWDA Notice described above, and the LWDA has not responded that it intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

43. Thus, Plaintiff has satisfied the administrative prerequisites under California Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

44. Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any

1 provision regulating hours and days of work in any order of the Industrial Welfare
2 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
3 dollars (\$50) for each underpaid employee for each pay period for which the employee was
4 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
5 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
6 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
7 to any other civil or criminal penalty provided by law.” Plaintiff, acting in the public interest
8 as a private attorney general, seeks assessment and collection of civil penalties under Labor
9 Code section 558 for herself, all other non-party Aggrieved Employees, and the State of
10 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
11 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private
12 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
13 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
14 applicable IWC wage order.

15 45. Defendants, at all times relevant to this complaint, were employers or persons
16 acting on behalf of an employer(s) who violated Plaintiff’s and other non-party Aggrieved
17 Employees’ rights by violating various sections of the California Labor Code as set forth
18 above.

19 46. As set forth below, Defendants have violated numerous provisions of both the
20 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
21 Order.

22 47. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
23 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
24 private attorney general, seeks assessment and collection of civil penalties for herself, all other
25 non-party Aggrieved Employees, and the State of California against Defendants for violations
26 of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510,
27 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802.

28 //

1 **FIRST CAUSE OF ACTION**

2 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

3 **(Against all Defendants)**

4 48. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
5 and every allegation set forth above.

6 49. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
7 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
8 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5,
9 226(a), 226.7, 227.3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and
10 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to
11 recover civil penalties for violations of those Labor Code sections not found in section 2699.5,
12 including sections 516 and 1182.12.

13 50. Defendants’ conduct, as alleged herein, violates numerous sections of the
14 California Labor Code, including, but not limited to, the following:

- 15 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
16 wage order for Defendants’ failure to compensate Plaintiff and other
17 non-party Aggrieved Employees with all required overtime pay and
18 failure to properly calculate the overtime rates paid to other non-party
19 Aggrieved Employees, as set forth below;
- 20 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
21 applicable IWC wage order for Defendants’ failure to compensate
22 Plaintiff and other non-party Aggrieved Employees with at least
23 minimum wages for all hours worked as set forth below;
- 24 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
25 applicable IWC wage order for Defendants’ failure to provide Plaintiff
26 and other non-party Aggrieved Employees with meal periods, as set
27 forth below;
- 28 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable

IWC wage order for Defendants' failure to authorize and permit Plaintiff and other non-party Aggrieved Employees to take rest periods, as set forth below;

(e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC wage order for failure to provide accurate and complete wage statements to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(f) Violation of Labor Code sections 1174(d), 1198, and the applicable IWC wage order for failure to maintain payroll records as set forth below;

(g) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;

(h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;

(i) Violation of Labor Code section 222.5 for failing to compensate other non-party Aggrieved Employees for mandatory physical examinations and/or drug testing, as set forth below;

(j) Violation of Labor Code section 227.3 for failure to pay Plaintiff and other non-party Aggrieved Employees all vested vacation time upon termination as set forth below;

(k) Violation of Labor Code sections 551 and 552 for failure to provide one day's rest in seven to Plaintiff and other non-party Aggrieved Employees, as set forth below;

(l) Violation of California Labor Code section 1198 and the applicable IWC wage order for failure to pay reporting time pay when other non-party Aggrieved Employees were put to work for less than half of their regular scheduled shifts, as set forth below; and

(m) Violation of Labor Code section 2802 for failure to reimburse Plaintiff

1 and other non-party Aggrieved Employees for all business expenses
2 necessarily incurred, as set forth below.

3 **FAILURE TO PAY OVERTIME**

4 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

5 51. Labor Code section 1198 makes it illegal to employ an employee under
6 conditions of labor that are prohibited by the applicable wage order. California Labor Code
7 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
8 be the . . . standard conditions of labor for employees. The employment of any employee . . .
9 under conditions of labor prohibited by the order is unlawful.”

10 52. California Labor Code section 1198 and the applicable IWC Wage Order
11 provide that it is unlawful to employ persons without compensating them at a rate of pay
12 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
13 number of hours worked by the person on a daily or weekly basis.

14 53. Specifically, the applicable IWC Wage Order provides that Defendants are and
15 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
16 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
17 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
18 hours in a workweek.

19 54. The applicable IWC Wage Order further provides that Defendants are and were
20 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
21 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
22 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
23 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

24 55. California Labor Code section 510 codifies the right to overtime compensation
25 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
26 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
27 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
28 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours

1 in a day on the seventh (7th) day of work.

2 56. During the relevant time period, Defendants willfully failed to pay all overtime
3 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
4 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
5 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
6 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
7 not recorded.

8 57. During the relevant period, Defendants had, and continue to have, a company-
9 wide policy and/or practice of improperly rounding employees' clock-in and clock-out times
10 in their timekeeping system to the nearest tenth (0.1) of an hour. Defendants' rounding policy
11 resulted in the failure to compensate Plaintiff and other non-party Aggrieved Employees fully
12 for all hours worked, causing Plaintiff and other non-party Aggrieved Employees to not be
13 paid overtime wages for all of the overtime hours they actually worked. Defendants' policy of
14 rounding is unfair and has, over time, resulted in the underpayment of wages to Plaintiff and
15 other non-party Aggrieved Employees. To the extent Defendants' rounding policy has taken
16 away time worked that was eligible for overtime, Plaintiff and other non-party Aggrieved
17 Employees were denied overtime pay for all hours worked.

18 58. Furthermore, Defendants had a designated entrance/exit at the factory through
19 which employees must pass through in order to utilize the timekeeping system. Before
20 clocking in for their shifts, Plaintiff and other non-party Aggrieved Employees were required
21 to wait in line in order to clock in using the company's timekeeping system located at the
22 entrance/exit of the factory. Plaintiff and other non-party Aggrieved Employees waited in line
23 off-the-clock, for 2-3 minutes per instance, in order to clock into their shifts at the start of the
24 day, but Defendants did not compensate them for the time they remained under the control of
25 Defendants.

26 59. Additionally, Defendants had a company-wide practice and/or policy of
27 understaffing their worksites while assigning heavy workloads, resulting in a failure to
28 provide other non-party Aggrieved Employees with adequate meal period coverage. As a

1 result of this lack of meal period coverage, other non-party Aggrieved Employees were not
2 always afforded uninterrupted 30-minute meal periods during shifts when they were entitled
3 to receive a meal period. For example, other non-party Aggrieved Employees would have
4 their meal periods interrupted by supervisors telling them to return to work in order to
5 complete pending orders. Thus, other non-party Aggrieved Employees missed and/or had
6 meal periods interrupted in order to complete their assigned workloads. Defendants did not
7 pay other non-party Aggrieved Employees for the time they continued to perform tasks during
8 meal periods. Furthermore, Defendants implemented a company-wide policy and/or practice
9 of automatically deducting meal periods from Plaintiff's and other non-party Aggrieved
10 Employees' time records. As a result of this policy, Defendants deducted 30-minute meal
11 periods from Plaintiff's and other non-party Aggrieved Employees' time records even when
12 meal periods were missed, short, and/or interrupted.

13 60. Defendants knew or should have known that, as a result of these company-wide
14 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
15 their assigned duties during meal periods and/or while off-the-clock, and were suffered or
16 permitted to perform work for which they were not paid. Because Plaintiff and other non-
17 party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty (40) hours
18 a week or more, some of this off-the-clock work qualified for overtime premium pay.
19 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
20 for all of the overtime hours they actually worked.

21 61. Furthermore, Defendants did not pay other non-party Aggrieved Employees the
22 correct overtime rate for the recorded overtime hours that they generated. In addition to an
23 hourly wage, Defendants paid other non-party Aggrieved Employees shift differential pay,
24 incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in
25 violation of the California Labor Code, Defendants failed to incorporate all compensation,
26 including, but not limited to, shift differential pay, incentive pay, nondiscretionary bonuses,
27 and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes
28 of calculating the overtime wage rate. Therefore, during times when other non-party

1 Aggrieved Employees worked overtime and received these other forms of pay, Defendants
2 failed to pay all overtime wages by paying a lower overtime rate than required.

3 62. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
4 the balance of overtime compensation as required by California law, violates the provisions of
5 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
6 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO PAY MINIMUM WAGES**

9 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

10 63. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
11 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
12 to be paid to employees, and the payment of a wage less than the minimum so fixed is
13 unlawful. Compensable work time is defined by the applicable wage order as "the time
14 during which an employee is subject to the control of an employer, and includes all the time
15 the employee is suffered or permitted to work, whether or not required to do so." Cal. Code.
16 Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

17 64. As set forth above, Defendants' company-wide policy and/or practice of
18 rounding Plaintiff's and other non-party Aggrieved Employees' hourly clock-in and clock-out
19 times in their timekeeping system to the nearest tenth of an hour resulted in the failure to
20 compensate them for all hours worked. As also stated above, Plaintiff and other non-party
21 Aggrieved Employees waited in line off-the-clock in order to clock into their shifts at the start
22 of the day, but were not compensated for the time they remained under the control of
23 Defendants. Moreover, as stated, due to Defendants' policy and/or practice of understaffing
24 while assigning heavy workloads, other non-party Aggrieved Employees were forced to
25 forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved
26 of all duties during meal periods. Also, as stated, Defendants had a company-wide practice
27 and/or policy of automatically deducting meal periods from Plaintiff's and other non-party
28 Aggrieved Employees' time records, even when meal periods were missed, short, and/or

1 interrupted.

2 65. Furthermore, Defendants maintained and implemented a company-wide policy
3 of requiring all employees to travel to a medical facility on their own time and using their own
4 personal vehicles to undergo mandatory drug testing and/or physical examinations. At all
5 times, Defendants were in control of scheduling the time period for the testing and/or physical
6 examinations, selecting the provider or facility where the testing and/or physical examinations
7 were to take place, and determining the scope of the testing and/or physical examinations.
8 Defendants gave other non-party Aggrieved Employees strict instructions to obtain drug
9 testing and/or physical examinations, and other non-party Aggrieved Employees underwent
10 the testing and/or examinations for the sole benefit of Defendants. Other non-party Aggrieved
11 Employees were required to travel in their personal vehicles or obtain alternate transportation
12 and spend time undergoing the requisite testing and/or examinations. However, Defendants
13 did not compensate other non-party Aggrieved Employees for the time they spent traveling to
14 and from the medical facilities and for the time they spent undergoing the mandatory drug
15 testing and/or physical examinations.

16 66. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
17 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
18 not qualify for overtime premium payment, Defendants did not pay at least minimum wages
19 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
20 1194, 1197, and 1198.

21 67. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
22 minimum wages violates California Labor Code sections 1182.12, 1194, 1197, and 1198.
23 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
26 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

27 68. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
28 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff and

1 non-party Aggrieved Employees' employment by Defendants.

2 69. At all relevant times herein set forth, California Labor Code section 512(a)
3 provides that an employer may not require, cause, or permit an employee to work for a period
4 of more than five (5) hours per day without providing the employee with a meal period of not
5 less than thirty (30) minutes, except that if the total work period per day of the employee is
6 not more than six (6) hours, the meal period may be waived by mutual consent of both the
7 employer and the employee. Under California law, first meal periods must start after no more
8 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
9 2012).

10 70. At all relevant times herein set forth, California Labor Code section 226.7,
11 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
12 meal period mandated by an applicable order of the IWC.

13 71. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
14 and the applicable IWC Wage Order also require employers to provide a second meal period
15 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
16 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
17 total hours worked is no more than twelve (12) hours, the second meal period may be waived
18 by mutual consent of the employer and the employee only if the first meal period was not
19 waived.

20 72. As stated, Defendants had, and continue to have, a company-wide policy and/or
21 practice of understaffing while simultaneously assigning heavy workloads. As a result,
22 Plaintiff and/or other non-party Aggrieved Employees had to work through part or all of their
23 meal periods, have their meal periods interrupted, and/or wait extended periods of time before
24 taking meal periods. For example, as stated, other non-party Aggrieved Employees would
25 have their meal periods interrupted in order to return to work completing pending orders.
26 Furthermore, as stated, Defendants implemented a company-wide policy and/or practice of
27 automatically deducting meal periods from Plaintiff's and other non-party Aggrieved
28 Employees' time records. As a result of this policy, Defendants deducted 30-minute meal

1 periods from Plaintiff's and other non-party Aggrieved Employees' time records even when
2 meal periods were missed, short, and/or interrupted. Thus, Defendants systematically failed to
3 correctly record meal periods.

4 73. In addition, during the relevant time period, Defendants did not provide
5 Plaintiff and other non-party Aggrieved Employees with second 30-minute meal periods on
6 days that they worked in excess of ten (10) hours in one day. For example, Plaintiff would
7 work in excess of ten (10) hours per day, during the busy season, at least once per year, and
8 was not provided her second meal period during these shifts. Plaintiff and other non-party
9 Aggrieved Employees did not sign valid meal period waivers on days that they were entitled
10 to meal periods and were not relieved of all duties.

11 74. Moreover, Defendants had a company-wide policy of requiring all newly hired
12 employees to sign blanket meal period waivers at or near their time of hire. Defendants took
13 the position that non-exempt, hourly paid employees had waived their rights to first and/or
14 second meal periods for the entirety of their employment and, on that basis, did not provide
15 them with all meal periods to which they were entitled. Defendants' company-wide use of
16 blanket meal period waivers signed at or near the time of hire discouraged and impeded
17 Plaintiff and other non-party Aggrieved Employees from taking all meal periods to which they
18 were entitled. And, Defendants' presumption that second meal periods would not be provided
19 for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period
20 waivers discouraged Plaintiff and other non-party Aggrieved Employees from taking second
21 meal periods.

22 75. What's more, an employer's obligation to provide a meal period is only
23 "triggered" when the employer "employs an employee for a work period of more than five
24 hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits
25 anyone to work for a full five hours, its meal break obligation is triggered.").

26 [A]fter the meal break obligation is triggered . . . an employer is put to a
27 choice: it must (1) afford an off-duty meal period; (2) consent to a
28 mutually agreed-upon waiver if one hour or less will end the shift; or (3)
obtain written agreement to an on-duty meal period if circumstances
permit. Failure to do one of these will render the employer liable for

premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

76. Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. That Defendant requires aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because Defendants' obligation to provide Plaintiff and other non-party Aggrieved Employees with meal periods did not arise until it had employed them for a full five (5) hours.

77. Defendants knew or should have known that as a result of their policies, Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to take timely, uninterrupted meal periods. Defendants further knew or should have known that they did not pay Plaintiff and other non-party Aggrieved Employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

78. Furthermore, Defendants engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that Defendants did pay meal period premium wages to other non-party Aggrieved Employees, they did so at the incorrect rates. Because Defendants did not properly calculate other non-party Aggrieved Employees' regular rates of pay by including all remunerations, such as shift differential pay, incentive pay, and/or nondiscretionary bonuses, any premiums paid for meal period violations were also paid at an incorrect rate and resulted in an underpayment of meal period premium wages.

79. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved Employees compliant meal periods and failed to pay the full meal period premiums due. Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and

1 (g).

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

3 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

4 80. At all relevant times herein set forth, the applicable IWC Wage Order and
5 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
6 non-party Aggrieved Employees' employment by Defendants.

7 81. At all relevant times, the applicable IWC Wage Order provides that "[e]very
8 employer shall authorize and permit all employees to take rest periods, which insofar as
9 practicable shall be in the middle of each work period" and that the "rest period time shall be
10 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
11 hours or major fraction thereof" unless the total daily work time is less than three and one-half
12 (3½) hours.

13 82. At all relevant times, California Labor Code section 226.7 provides that no
14 employer shall require an employee to work during any rest period mandated by an applicable
15 order of the California IWC. To comply with its obligation to authorize and permit rest
16 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
17 employer must "relinquish any control over how employees spend their break time, and
18 relieve their employees of all duties—including the obligation that an employee remain on
19 call. A rest period, in short, must be a period of rest." *Augustus v. ABM Security Services,*
20 *Inc.*, 2 Cal. 5th 257, 269-270 (2016).

21 83. Pursuant to the applicable IWC Wage Order and California Labor Code section
22 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from
23 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
24 required rest period was not authorized and permitted.

25 84. During the relevant time period, Defendants regularly failed to authorize and
26 permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest
27 period per each four (4) hour period worked or major fraction thereof. As with meal periods,
28 Defendants' policies and/or practice of understaffing and assigning heavy workloads,

1 prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty
2 in order to take compliant rest periods. Defendants also had a policy or practice of failing
3 authorize and permit Plaintiff and other non-party Aggrieved Employees to take third rest
4 periods when they worked in excess of 10 hours in one day.

5 85. Furthermore, during the relevant time period, Defendants maintained a
6 company-wide on-premises rest period policy, which mandated that Plaintiff and other non-
7 party Aggrieved Employees remain on Defendants' premises during their rest periods.
8 Specifically, Plaintiff and other non-party Aggrieved Employees were told they could only
9 take their rest periods in the restroom or in the break area and were explicitly instructed not to
10 leave the premises while on the clock. Because Plaintiff and other non-party Aggrieved
11 Employees were restricted from leaving the premises during rest periods, they were denied the
12 ability to use their rest periods freely for their own purposes. Thus, Defendants effectively
13 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
14 periods.

15 86. As a result of Defendants' practices and policies, Plaintiff and other non-party
16 Aggrieved Employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
17 excess of 10 hours without being permitted and authorized to take all ten (10) minute rest
18 periods to which they were entitled. For example, throughout her employment, Plaintiff had
19 her rest periods interrupted 3-4 times per month by supervisors asking her to complete
20 pending orders and did not receive a third rest period when working in excess of 10 hours in a
21 day.

22 87. Defendants also have engaged in a company-wide practice and/or policy of not
23 paying all rest period premiums owed when compliant rest periods are not authorized and
24 permitted. Alternatively, to the extent that Defendants did pay rest period premium wages to
25 other non-party Aggrieved Employees, they did so at the incorrect rates. Because Defendants
26 did not properly calculate other non-party Aggrieved Employees' regular rates of pay by
27 including all remunerations, such as shift differential pay, incentive pay, and/or
28 nondiscretionary bonuses, any premiums paid for rest period violations were also paid at an

1 incorrect rate and resulted in an underpayment of rest period premium wages.

2 88. Defendants' conduct violates the applicable IWC Wage Order and California
3 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
4 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
5 558 and/or 2699(a), (f), and (g).

6 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
7 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

8 89. At all relevant times herein, California Labor Code section 226(a) provides that
9 every employer shall furnish each of his or her employees an accurate and complete itemized
10 wage statement in writing, including, but not limited to, the name and address of the legal
11 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
12 applicable rates of pay.

13 90. During the relevant time period, Defendants have knowingly and intentionally
14 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
15 inaccurate wage statements. For example, Defendants issued uniform wage statements to
16 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
17 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
18 the pay period, including overtime rates of pay, and the corresponding number of hours
19 worked at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2),
20 226(a)(5), and 226(a)(9).

21 91. Because Defendants did not record the time Plaintiff and other non-party
22 Aggrieved Employees spent working off-the-clock, deducted time from their records for meal
23 periods that were interrupted and/or missed (and therefore time for which they should have
24 been paid), and/or improperly rounded their total hours worked, Defendants did not list the
25 correct amount of gross wages and net wages earned by Plaintiff and other non-party
26 Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5),
27 respectively. For the same reason, Defendants failed to accurately list the total number of
28 hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section

1 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
2 and the corresponding accurate number of hours worked at each hourly rate, in violation of
3 section 226(a)(9).

4 92. Also, because Defendants did not calculate other non-party Aggrieved
5 Employees' regular rate of pay correctly for purposes of paying overtime, Defendants did not
6 list the correct amount of gross wages in compliance with section 226(a)(1). For the same
7 reason, Defendants also failed to list the correct amount of net wages in violation of section
8 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during
9 the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest
10 premium wages, in violation of section 226(a)(9).

11 93. The wage statement deficiencies also include, without limitation, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
13 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
14 only the last four digits of his or her social security number or an employee identification
15 number other than a social security number; failing to list the name and address of the legal
16 entity that is the employer; failing to list the inclusive dates of the period for which aggrieved
17 employees were paid; and/or failing to state all hours worked as a result of not recording or
18 stating hours worked off-the-clock.

19 94. California Labor Code section 1174(d) provides that "[e]very person employing
20 labor in this state shall ... [k]eep a record showing the names and addresses of all employees
21 employed and the ages of all minors" and "[k]eep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants or
25 establishments..." Labor Code section 1174(d), Defendants willfully failed to maintain
26 accurate payroll records for Plaintiff and other non-party Aggrieved Employees showing the
27 daily hours they worked and the wages paid thereto as a result of failing to record the off-the-
28 clock hours that they worked and improperly rounding Plaintiff's and other non-party

1 Aggrieved Employees' total hours worked.

2 95. California Labor Code section 1198 provides that the maximum hours of work
3 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
4 set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he
5 employment of any employees for longer hours than those fixed by the order or under
6 conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC
7 Wage Order, employers are required to keep accurate time records showing when the
8 employee begins and ends each work period and meal period. During the relevant time
9 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
10 and meal period start and end times for Plaintiff and other non-party Aggrieved Employees, in
11 violation of section 1198. As stated, Defendants engaged in a company-wide practice and/or
12 policy of falsifying Plaintiff's and/or other non-party Aggrieved Employees' time records by
13 deducting meal periods regardless of if or when meal periods were actually taken, and kept no
14 records of meal start and end times altogether. Furthermore, in light of Defendants' failure to
15 provide Plaintiff and other non-party Aggrieved Employees with second 30-minute meal
16 periods to which they were entitled, Defendants kept no records of meal start and end times
17 for second meal periods.

18 96. Because Defendants' violations of 226(a) and 1174(d) were committed against
19 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
20 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3,
21 1174.5, and/or 2699(a), (f), and (g).

22 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

23 **VIOLATION OF LABOR CODE SECTION 204**

24 97. At all relevant times herein set forth, California Labor Code section 204
25 requires that all wages earned by any person in any employment between the 1st and the 15th
26 days, inclusive, of any calendar month, other than those wages due upon termination of an
27 employee, are due and payable between the 16th and the 26th day of the month during which
28 the labor was performed. Labor Code section 204 further provides that all wages earned by

1 any person in any employment between the 16th and the last day, inclusive, of any calendar
2 month, other than those wages due upon termination of an employee, are due and payable
3 between the 1st and the 10th day of the following month.

4 98. At all relevant times herein, California Labor Code section 204 also requires
5 that all wages earned for labor in excess of the normal work period shall be paid no later than
6 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
7 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
8 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
9 more than seven (7) calendar days following the close of the payroll period.

10 99. During the relevant time period, Defendants willfully failed to pay Plaintiff and
11 other non-party Aggrieved Employees all wages due to them within any time period specified
12 by California Labor Code section 204 including, but not limited to, overtime wages; minimum
13 wages; meal and rest period premium wages; and/or reporting time pay.

14 100. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
15 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

16 **FAILURE TO PAY WAGES UPON TERMINATION**

17 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

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

25 102. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
26 Employees who are no longer employed by Defendants the earned and unpaid wages set forth
27 above, including but not limited to, overtime wages; minimum wages; meal and rest period
28 premium wages; all vested vacation pay; and/or reporting time pay, either at the time of

1 discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

2 103. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
3 who are no longer employed by Defendants their wages earned and unpaid at the time of
4 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
5 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
6 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
7 2699(a), (f), and (g).

8 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**
9 **VIOLATION OF LABOR CODE SECTION 222.5**

10 104. At all relevant times herein, California Labor Code section 222.5 requires
11 employers to pay for the costs an employee incurs for obtaining any required medical or
12 physical examination.

13 105. During the relevant time period, Defendants implemented, on a company-wide
14 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
15 mandatory drug tests and/or physical examinations, but required them to do so at their own
16 expense. As stated, Defendants had a company-wide policy requiring that other non-party
17 Aggrieved Employees travel to a specified medical facility on their own time and use their
18 own means of transportation to undergo drug testing and/or physical examinations. At all
19 times, Defendants were in control of scheduling the date and time for the drug testing and/or
20 physical examinations, selecting the provider/facility where the drug testing and/or physical
21 examinations were to take place, and determining the scope of the drug test and/or physical
22 examinations.

23 106. However, Defendants did not compensate other non-party Aggrieved
24 Employees for the time they spent traveling to and from their drug tests and/or physical
25 examinations, or for the time they spent undergoing the testing and/or examinations, or
26 reimburse them for the travel expenses they incurred getting to and from the medical facilities.
27 Defendants' policy and/or practice of not paying for all costs other non-party Aggrieved
28 Employees incurred obtaining mandatory drug tests and/or physical examinations is in

1 violation of California Labor Code section 222.5.

2 107. Other non-party Aggrieved Employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO PAY ALL VESTED VACATION TIME AND PAID TIME OFF**
5 **UPON TERMINATION**

6 **VIOLATION OF LABOR CODE SECTION 227.3**

7 108. At all relevant times herein, California Labor Code section 227.3 provides that
8 whenever a contract of employment or employer policy provides for paid vacations, and an
9 employee is terminated without having taken his or her vested vacation time, all vested
10 vacation shall be paid to him or her as wages at his or her final rate in accordance with such
11 contract of employment or employer policy respecting eligibility or time served.

12 109. During the relevant time period, Defendants had a uniform, company-wide
13 policy and/or practice of failing to pay Plaintiff and other non-party Aggrieved Employees
14 vested vacation wages that were owed to them at the end of their employment at their final
15 rates of pay, in violation of California Labor Code section 227.3. Rather, Defendants willfully
16 and improperly paid Plaintiff and other non-party Aggrieved Employees their unused and
17 vested vacation wages upon their separation at lower rates of pay. Specifically, Plaintiff
18 earned \$13.00 per hour at the time her employment with Defendants ended. However,
19 Defendants paid out Plaintiff's unused and accrued vacation wages at a lower rate of pay.

20 110. Furthermore, on information and belief, Defendants failed to calculate and pay
21 all earned vested vacation hours due to the hours Plaintiff and other non-party Aggrieved
22 Employees worked off-the-clock pursuant to company-wide policies and/or practices.
23 Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees all vested
24 vacation wages at the end of their employment has caused a forfeiture of vested vacation
25 wages in violation of California Labor Code section 227.3.

26 111. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
27 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

28 //

1 **FAILURE TO PROVIDE ONE DAY’S REST IN SEVEN**
2 **VIOLATION OF LABOR CODE SECTIONS 551 AND 552**

3 112. At all relevant times herein, California Labor Code section 551 provides that
4 every person employed in any occupation of labor is entitled to one day’s rest in seven.
5 Additionally, California Labor Code section 552 prohibits employers from requiring
6 employees to work more than six consecutive days without a day of rest.

7 113. Further, at all times relevant herein set forth, California Labor Code section 556
8 exempts an employer from the day-of-rest requirement when the total hours worked by an
9 employee do not exceed 30 hours in any week or six hours in any one day thereof.

10 114. During the relevant period, Defendants required Plaintiff and other non-party
11 Aggrieved Employees to work eight (8) or more hours per day and seven (7) consecutive days
12 in a workweek. For example, Plaintiff worked seven (7) consecutive days approximately 2-3
13 times per year during the busy season (August and September), and once worked 14
14 consecutive days. Because Plaintiff and other non-party Aggrieved Employees worked over
15 thirty (30) hours per week and over six (6) hours per day in a workweek, they were not
16 exempt from the day-of-rest requirement. To the extent that Plaintiff and other non-party
17 Aggrieved Employees signed purported waivers of their right to a day’s rest in seven, such
18 waivers are invalid.

19 115. Thus, during the relevant time period, and in violation of Labor Code sections
20 551 and 552, Defendants willfully caused Plaintiff and other non-party Aggrieved Employees
21 to work more than six days in seven. Plaintiff and other non-party Aggrieved Employees are
22 therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
23 2699(a), (f), and (g).

24 **FAILURE TO PAY REPORTING TIME PAY**
25 **VIOLATION OF LABOR CODE SECTION 1198**

26 116. California Labor Code section 1198 makes it illegal to employ an employee
27 under conditions of labor that are prohibited by the applicable wage order. California Labor
28 Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission

1 shall be the . . . standard conditions of labor for employees. The employment of any employee
2 . . . under conditions of labor prohibited by the order is unlawful.”

3 117. California Code of Regulations, Title 8, section 11010(5)(A) provides that
4 “[e]ach workday an employee is required to report for work and does report, but is not put to
5 work or is furnished less than half said employee’s usual or scheduled day’s work, the
6 employee shall be paid for half the usual or scheduled day’s work, but in no event for less
7 than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which
8 shall not be less than the minimum wage.” The “primary purpose of the reporting time
9 regulation” is “to guarantee at least partial compensation for employees who report to work
10 expecting to work a specified number of hours, and who are deprived of that amount because
11 of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch*
12 *Cellular*, 209 Cal. App. 4th 556 (2012).

13 118. Upon information and belief, Defendants violated California Labor Code
14 section 1198 and California Code of Regulations, Title 8, section 11010(5), because
15 Defendants failed to pay other non-party Aggrieved Employees reporting time pay when they
16 reported to work for their scheduled shift but were put to work for less than half of the regular
17 schedule.

18 119. During the relevant period, Defendants had a company-wide practice of
19 sending other non-party Aggrieved Employees home early from their shifts, including before
20 they had worked at least half of their regular shift, but would not pay other non-party
21 Aggrieved Employees for half of their scheduled shift. For example, other non-party
22 Aggrieved Employees would report to work, but would be sent home early by Defendants’
23 management when it was slow. Although other non-party Aggrieved Employees would report
24 to work based on the schedule that Defendants provided to them, Defendants would send them
25 home before they had worked at least half of their scheduled shifts without giving them
26 reporting time pay. Accordingly, other non-party Aggrieved Employees were not properly
27 compensated with reporting time pay in violation of California Labor Code section 1198.

28 120. Other non-party Aggrieved Employees are therefore entitled to recover civil

1 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

2 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

3 **VIOLATION OF LABOR CODE SECTION 2802**

4 121. At all times herein set forth, California Labor Code section 2802 provides that
5 an employer must reimburse employees for all necessary expenditures and losses incurred by
6 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
7 to prevent employers from passing off their cost of doing business and operating expenses on
8 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
9 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen the
10 employer requires the use of tools or equipment or they are necessary to the performance of a
11 job, such tools and equipment shall be provided and maintained by the employer, except that
12 an employee whose wages are at least two (2) times the minimum wage may provide and
13 maintain hand tools and equipment customarily required by the particular trade or craft."

14 122. As stated, Defendants had a company-wide policy of requiring other non-party
15 Aggrieved Employees to travel in their own personal vehicles to medical facilities to undergo
16 mandatory drug testing and/or physical examinations, but did not reimburse them for their
17 travel expenses. At all times, Defendants were control of scheduling the date and time for the
18 testing and/or physical examinations, selecting the provider or facility where the testing and/or
19 physical examinations were to take place, and determining the scope of the testing and/or
20 physical examinations. Defendants gave other non-party Aggrieved Employees strict
21 instructions to obtain drug testing and/or physical examinations, and other non-party
22 Aggrieved Employees underwent the examinations and/or testing for the sole benefit of
23 Defendants. Although Defendants required other non-party Aggrieved Employees to use their
24 own vehicles or obtain alternate transportation to undergo physical examinations and/or drug
25 testing, Defendants never reimbursed them for their travel expenses.

26 123. Defendants could have provided other non-party Aggrieved Employees with the
27 actual tools for use on the job, such as company vehicles, or, Defendants could have
28 reimbursed them for their mileage and travel expenses. Instead, Defendants passed these

1 operating costs off onto other non-party Aggrieved Employees. At all relevant times, other
2 non-party Aggrieved Employees did not earn at least two (2) times the minimum wage.

3 124. Defendants' company-wide policy and/or practice of passing on their operating
4 costs to other non-party Aggrieved Employees violates California Labor Code section 2802.
5 Defendants have intentionally and willfully failed to reimburse other non-party Aggrieved
6 Employees for necessary business-related expenses and costs. Other non-party Aggrieved
7 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
8 2699(a), (f), and (g).

9 **REQUEST FOR JURY TRIAL**

10 Plaintiff requests a trial by jury.

11 **PRAYER FOR RELIEF**

12 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
13 judgment against Defendants, jointly and severally, as follows:

14 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
15 (\$25,000). Plaintiff reserves the right to amend her prayer for relief to seek a different amount.

16 **As to the First Cause of Action**

17 2. That the Court declare, adjudge and decree that Defendants violated the
18 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
19 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
20 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516,
21 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
22 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
23 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
24 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
25 employment); 222.5 (by failing to pay the costs of mandatory drug testing and/or physical
26 examinations); 227.3 (by failing to pay all vested vacation days upon termination); 551 and
27 552 (by failing to provide one day's rest in seven); 1198 (by failing to provide reporting time
28 pay); and 2802 (by failing to reimburse business expenses).

3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

4. For attorneys' fees and costs pursuant to California Labor Code section 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1198, and 2802;

5. For pre-judgment and post-judgment interest as provided by law; and

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

Dated: November 30, 2020

Respectfully submitted,

Capstone Law APC

By:

Robert Drexler
Molly DeSario
Jonathan Lee

Attorneys for Plaintiff Bertha Zamora

Exhibit 1

MAO SHIOKURA
310.712.8030 Direct
Mao.Shiokura@capstonelawyers.com

September 25, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/266>)

Subject: *Bertha Zamora v. Fox Factory, Inc., et al.*

Dear PAGA Administrator:

This office represents Bertha Zamora in connection with her claims under the California Labor Code. Ms. Zamora was an employee of FOX FACTORY, INC. and/or FOX FACTORY HOLDING CORP. For the purpose of this letter, Ms. Zamora collectively refers to these entities as “FOX.”

The employers may be contacted directly at the addresses below:

FOX FACTORY, INC.
6634 HIGHWAY 53
BRASELTON GA 30517

FOX FACTORY, INC.
915 DISC DR
SCOTTS VALLEY CA 95066

FOX FACTORY HOLDING CORP.
6634 HIGHWAY 53
BRASELTON GA 30517

Ms. Zamora intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Ms. Zamora seeks relief on behalf of herself, the State of California, and other persons who are or were employed by FOX as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

FOX employed Ms. Zamora as an hourly paid, non-exempt employee from approximately April 2013 to April 10, 2020. Ms. Zamora worked for FOX as an Assembler at its location in Watsonville, California. During her employment, Ms. Zamora typically worked eight (8) hours or more per day, and five (5) days or more per week. At the time Ms. Zamora’s employment with FOX ended, she

earned approximately \$13.00 per hour. Her job duties included, without limitation, assembling bumper parts for bicycles, motorcycles, and snowmobiles.

FOX committed one or more of the following Labor Code violations against Ms. Zamora, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

FOX’s Company-Wide and Uniform Payroll and HR Practices

FOX FACTORY, INC. and FOX FACTORY HOLDING CORP. are California and Delaware corporations, respectively. FOX is a designer and manufacturer of suspension-related components for motorcycles, bicycles, off-road vehicles, and other specialty vehicles, including at least one manufacturing facility in Watsonville, California. Upon information and belief, FOX maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Braseltown, Georgia, for all non-exempt, hourly paid employees working for FOX in California, including Ms. Zamora and other aggrieved employees. At all relevant times, FOX issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Zamora and other aggrieved employees, regardless of its location or position.

Upon information and belief, FOX maintains a centralized Payroll department at its corporate headquarters in Braseltown, Georgia, which processes payroll for all non-exempt, hourly paid employees working for FOX in California, including Ms. Zamora and other aggrieved employees. Further, FOX issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Ms. Zamora and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, FOX utilized the same methods and formulas when calculating wages due to Ms. Zamora and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working 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 (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

¹ These facts, theories, and claims are based on Ms. Zamora’s experience and counsel’s review of those records currently available relating to Ms. Zamora’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Zamora reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

FOX willfully failed to pay all overtime wages owed to Ms. Zamora and other aggrieved employees. During the relevant time period, Ms. Zamora and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

During the relevant period, FOX had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out times in their timekeeping system to the nearest tenth (0.1) of an hour. FOX's rounding policy resulted in the failure to compensate Ms. Zamora and other aggrieved employees fully for all hours worked, causing Ms. Zamora and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. FOX's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Ms. Zamora and other aggrieved employees. To the extent FOX's rounding policy has taken away time worked that was eligible for overtime, Ms. Zamora and other aggrieved employees were denied overtime pay for all hours worked.

Furthermore, FOX had a designated entrance/exit at the factory through which employees must pass through in order to utilize the timekeeping system. Before clocking in for their shifts, Ms. Zamora and other aggrieved employees were required to wait in line in order to clock in using the company's timekeeping system located at the entrance/exit of the factory. Ms. Zamora and/or other aggrieved employees waited in line off-the-clock, for 2-3 minutes per instance, in order to clock into their shifts at the start of the day or to clock back in after returning from meal periods, but FOX did not compensate them for the time they remained under the control of FOX.

Additionally, FOX had a company-wide practice and/or policy of understaffing its worksites while assigning heavy workloads, resulting in a failure to provide other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, other aggrieved employees would have their meal periods interrupted by supervisors telling them to return to work in order to complete pending orders. Thus, other aggrieved employees missed and/or had meal periods interrupted in order to complete their assigned workloads. FOX did not pay other aggrieved employees for the time they continued to perform tasks during meal periods. Furthermore, FOX implemented a company-wide policy and/or practice of automatically deducting meal periods from Ms. Zamora's and other aggrieved employees' time records. As a result of this policy, FOX deducted 30-minute meal periods from Ms. Zamora and/or other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted.

FOX knew or should have known that as a result of these company-wide practices and/or policies, Ms. Zamora and/or other aggrieved employees were performing their assigned duties off-the-clock and/or were working during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Zamora and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Zamora and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, FOX did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, FOX paid other aggrieved employees shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of

remuneration. However, in violation of the California Labor Code, FOX failed to incorporate all compensation, including, but not limited to, shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, FOX failed to pay all overtime wages by paying a lower overtime rate than required.

Ms. Zamora and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, FOX's company-wide policy and/or practice of rounding Ms. Zamora's and other aggrieved employees' hourly clock-in and clock-out times in their timekeeping system to the nearest tenth resulted in the failure to compensate them for all hours worked. As also stated above, Ms. Zamora and/or other aggrieved employees waited in line off-the-clock in order to clock into their shifts at the start of the day or to clock back in after returning from meal periods, but were not compensated for the time they remained under the control of FOX. Moreover, as stated, due to FOX's policy and/or practice of understaffing while assigning heavy workloads, other aggrieved employees were forced to forego meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during meal periods. Also, as stated, FOX had a company-wide practice and/or policy of automatically deducting meal periods from Ms. Zamora's and/or other aggrieved employees' time records, even when meal periods were missed, short, and/or interrupted.

Furthermore, FOX maintained and implemented a company-wide policy of requiring all employees to travel to a medical facility on their own time and using their own personal vehicles to undergo mandatory drug testing and/or physical examinations. At all times, FOX was in control of scheduling the time period for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. FOX gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the testing and/or examinations for the sole benefit of FOX. Other aggrieved employees were required to travel in their personal vehicles or obtain alternate transportation and spend time undergoing the requisite testing and/or examinations. However, FOX did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities and for the time they spent undergoing the mandatory drug testing and/or physical examinations.

Thus, FOX did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, FOX did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, FOX

regularly failed to pay at least minimum wages to Ms. Zamora and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Ms. Zamora and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, FOX had, and continues to have, a company-wide policy and/or practice of understaffing while simultaneously assigning heavy workloads. As a result, Ms. Zamora and/or other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and/or wait extended periods of time before taking meal periods. For example, as stated, other aggrieved employees would have their meal periods interrupted in order to return to work completing pending orders. As also stated above, FOX had a policy and/or practice requiring employees to pass through a designated entrance/exit at the factory in order to utilize the timekeeping system. Ms. Zamora and/or other aggrieved employees were required to cut short their meal periods in order to wait in line in order to clock in on time. Furthermore, as stated, FOX implemented a company-wide policy and/or practice of automatically deducting meal periods from Ms. Zamora's and other aggrieved employees' time records. As a result of this policy FOX deducted 30-minute meal periods from Ms. Zamora's and/or other aggrieved employees' time records even when meal periods were missed, short, and/or interrupted. Thus, FOX systematically failed to correctly record meal periods.

In addition, during the relevant time period, FOX did not provide Ms. Zamora and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, Ms. Zamora would work in excess of ten (10) hours per day, during the busy season at least once per year, and was not provided her second meal period during these shifts. Ms. Zamora and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, FOX had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. FOX took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. FOX's company-wide use of blanket meal period waivers signed at or near the time of hire discouraged and impeded Ms. Zamora and other aggrieved employees from taking all meal periods to which they were entitled. And, FOX's presumption that second meal periods would not be provided for shifts in excess of ten (10) hours but less than twelve (12) hours due to blanket meal period waivers discouraged Ms. Zamora and other aggrieved employees from taking second meal periods.

What's more, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay. *Id.* (citing Cal. Labor Code § 226.7; Wage Order No. 5, subd. 11(A), (B)).

Further, under Labor Code section 512(a) and the applicable IWC Wage Order, employees may waive their second meal periods only if they took their first meal period. That FOX requires aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because FOX's obligation to provide Ms. Zamora and other aggrieved employees with meal periods did not arise until it had employed them for a full five (5) hours.

As a result of FOX's practices and/or policies, Ms. Zamora and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. FOX knew or should have known that as a result of its policies, Ms. Zamora and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. FOX further knew or should have known that it did not pay Ms. Zamora and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, FOX engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Ms. Zamora and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that FOX did pay other aggrieved employees premium pay for missed, late, and interrupted meal periods, FOX did not pay other aggrieved employees at the correct rate of pay for premium wages because FOX systematically failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, FOX failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Zamora and other aggrieved employees are entitled to civil

penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. 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. 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 (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, FOX regularly failed to authorize and permit Ms. Zamora and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, FOX's policies and/or practice of understaffing and assigning heavy workloads, prevented Ms. Zamora and/or other aggrieved employees from being relieved of all duty in order to take compliant rest periods. FOX also had a policy or practice of failing authorize and permit Ms. Zamora and other aggrieved employees to take third rest periods when they worked in excess of 10 hours in one day.

Furthermore, during the relevant time period, FOX maintained a company-wide on-premises rest period policy, which mandated that Ms. Zamora and other aggrieved employees remain on FOX's premises during their rest periods. Specifically, Ms. Zamora and other aggrieved employees were told they could only take their rest periods in the restroom or in the break area and were explicitly instructed not to leave the premises while on the clock. Because Ms. Zamora and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, FOX effectively maintained control over Ms. Zamora and other aggrieved employees during rest periods.

As a result, Ms. Zamora and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout her employment, Ms. Zamora had her rest periods interrupted 3-4 times per month by supervisors asking her to complete pending orders and did not receive a third rest period when working in excess of 10 hours in a day.

FOX also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that FOX did pay other aggrieved employees one (1) additional hour of premium pay for

missed rest periods, FOX did not pay other aggrieved employees at the correct rate of pay for premium wages because FOX failed to include all forms of compensation, such as shift differential pay, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, FOX failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Zamora and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. FOX has not provided Ms. Zamora and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, FOX has knowingly and intentionally provided Ms. Zamora and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, FOX issued uniform wage statements to Ms. Zamora and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, FOX violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because FOX did not record the time Ms. Zamora and other aggrieved employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and/or improperly rounded their total hours worked, FOX did not list the correct amount of gross wages and net wages earned by Ms. Zamora and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, FOX failed to accurately list the total number of hours worked by Ms. Zamora and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Also, because FOX did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, FOX did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, FOX also failed to list the correct amount of net wages in violation of section 226(a)(5). FOX also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the 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; failing to list the name and address of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, 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” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), FOX willfully failed to maintain accurate payroll records for Ms. Zamora and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked and improperly rounding Ms. Zamora’s and other aggrieved employees’ total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, FOX failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Ms. Zamora and other aggrieved employees, in violation of section 1198. As stated, FOX engaged in a company-wide practice and/or policy of falsifying Ms. Zamora’s and/or other aggrieved employees’ time records by deducting meal periods regardless of if or when meal periods were actually taken, and kept no records of meal start and end times altogether. Furthermore, in light of FOX’s failure to provide Ms. Zamora and other aggrieved employees with second 30-minute meal periods to which they were entitled, FOX kept no records of meal start and end times for second meal periods.

Because FOX failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Zamora and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Zamora and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Zamora and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, FOX failed to pay Ms. Zamora and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, and/or reporting time pay, within any time period specified by California Labor Code section 204.

Ms. Zamora and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

FOX willfully failed to pay Ms. Zamora and other aggrieved employees who are no longer employed by FOX all their earned wages, including, but not limited to, overtime wages, minimum wages, meal and rest period premium wages, all vested vacation pay, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving FOX's employ in violation of California Labor Code sections 201, 202, and 203.

Ms. Zamora and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 222.5 – Failure to Pay for Costs of Mandatory Physical Exams and/or Drug Testing

At all times herein set forth, California Labor Code section 222.5 requires employers to pay for the costs an employee incurs for obtaining any required medical or physical examination.

During the relevant time period, FOX implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory physical examination and/or drug

test, but required them to do so at their own expense. As stated, upon information and belief, FOX had a company-wide policy requiring that all employees travel to a specified medical facility using their own personal vehicles to undergo physical examinations and/or drug testing. At all times, FOX was in control of scheduling the date and time for the examination and/or testing, selecting the provider/facility where the examination and/or testing was to take place, and determining the scope of the examination and/or testing.

Other aggrieved employees were required to travel in their own personal vehicles to designated medical facilities and spend time undergoing FOX's mandatory drug test and/or physical examination. However, FOX did not compensate other aggrieved employees for the time they spent traveling to and from their drug tests and/or physical examinations, or for the time they spent undergoing the testing and/or examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. FOX's policy and/or not paying for all costs other aggrieved employees incurred obtaining mandatory physical examinations and/or drug testing is in violation of California Labor Code section 222.5.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 227.3 – Failure to Pay Vested Vacation Wages

California Labor Code section 227.3 provides that if a contract of employment or employer policy provides for paid vacations and an employer terminates an employee, all vested vacation shall be paid to the employee at the employee's final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served. Vacation time vests on a pro-rata basis and, upon termination, an employee is entitled to a pro rata share of vested vacation pay. An employer may not require an employee to forfeit earned but unused vacation pay.

FOX had a company-wide policy and practice of failing to pay Ms. Zamora and other aggrieved employees vested vacation wages that were owed to them at the end of their employment at their final rates of pay, in violation of California Labor Code section 227.3. Rather, FOX willfully and improperly paid Ms. Zamora and other aggrieved employees their unused and vested vacation wages upon their separation at lower rates of pay. Specifically, Ms. Zamora earned \$13.00 per hour at the time her employment with FOX ended. However, FOX paid out Ms. Zamora's accrued and unused vacation wages at a lower rate of pay. Furthermore, on information and belief, FOX failed to calculate and pay all earned vested vacation hours due to the hours Ms. Zamora and other aggrieved employees worked off-the-clock pursuant to company-wide policies and/or practices. FOX's failure to pay Ms. Zamora and other aggrieved employees all vested vacation wages at the end of their employment has caused a forfeiture of vested vacation wages in violation of California Labor Code section 227.3.

Ms. Zamora and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from

requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant period, FOX required Ms. Zamora and other aggrieved employees to work eight (8) or more hours per day and seven (7) consecutive days in a workweek. For example, Ms. Zamora worked seven (7) consecutive days approximately 2-3 times per year during the busy season (August and September), and once worked 14 consecutive days. Because Ms. Zamora and other aggrieved employees worked over thirty (30) hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Ms. Zamora and other aggrieved employees signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, FOX caused Ms. Zamora and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Ms. Zamora and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11010 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC wage order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11010(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee's usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012)

FOX violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11010(5), because FOX failed to pay other aggrieved employees reporting time pay when they reported to work for their scheduled shifts, but were put to work for less than half of the regular schedule. FOX had a company-wide practice of sending other aggrieved employees home early from their shifts, including before they had worked at least half of their regular shift, but would not pay other aggrieved employees for half of their scheduled shift. For example, other aggrieved employees would report to work, but would be sent home early by FOX's management when it was slow. Although other aggrieved employees would report to work based on the schedule that FOX provided to them, FOX would send them home before they had worked at least half of their scheduled shifts without giving them reporting time pay. Accordingly, other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198.

Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

As stated, FOX had a company-wide policy of requiring other aggrieved employees to travel in their own personal vehicles to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, FOX was in control of scheduling the date and time for the testing and/or physical examinations, selecting the provider or facility where the testing and/or physical examinations were to take place, and determining the scope of the testing and/or physical examinations. FOX gave other aggrieved employees strict instructions to obtain drug testing and physical examinations, and other aggrieved employees underwent the testing and physical examinations for the sole benefit of FOX. Although FOX required other aggrieved employees to undergo drug testing, FOX never reimbursed them for all of their travel expenses.

FOX could have provided other aggrieved employees with the actual tools for use on the job, such as company vehicles, or FOX could have fully reimbursed employees for the costs of travel expenses and mileage. Instead, FOX passed these operating costs off onto other aggrieved employees. At all relevant times, other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, FOX had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny 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 . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." FOX, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Zamora's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Zamora seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Zamora, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for herself, all other aggrieved employees, and the State of California against FOX for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 227.3, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Pre-Litigation Demand

This notice shall further serve as Ms. Zamora's reasonable attempt to settle her dispute with FOX prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform FOX of Ms. Zamora's aforementioned grievances and the proposed remedies as detailed below, while affording FOX a reasonable opportunity to satisfy Ms. Zamora's demands.

Demand is hereby made that FOX shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. FOX shall pay Ms. Zamora and all other aggrieved employees employed by FOX at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. FOX shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid all vested vacation pay and reporting time pay.
3. FOX shall conduct a survey or interview all current and former aggrieved employees in California who worked for FOX in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mandatory medical examinations, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. FOX shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. FOX also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. FOX shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for FOX's benefit, including, but not limited to, costs of mandatory medical examinations and travel expenses, as required by Labor Code sections 222.5 and 2802.
6. FOX shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.

7. FOX shall provide Ms. Zamora and all aggrieved employees employed by FOX at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. FOX shall pay former aggrieved employees their vested vacation wages at their final rate of pay, in accordance with such contract of employment or employer policy respecting eligibility or time served, as required by Labor Code section 227.3.
9. FOX shall provide all aggrieved employees who worked over thirty (30) hours per week and over six (6) hours per day in a workweek with one day's rest in seven, as required by Labor Code sections 551 and 552.
10. FOX shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
11. FOX shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

Therefore, on behalf of all aggrieved employees, Ms. Zamora seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Mao Shiokura
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Mao Shiokura

Copy: FOX FACTORY, INC. (via U.S. Certified Mail); FOX FACTORY HOLDING CORP. (via U.S. Certified Mail)



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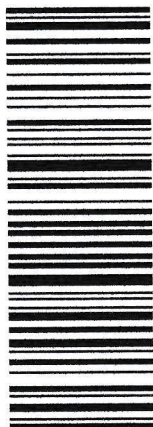
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7019 2280 0000 7398 6527

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

FOX FACTORY HOLDING CORP.
6634 HIGHWAY 53
BRASELTON GA 30517

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

\$ 3.50

Extra Services & Fees (check box, add fee as appropriate)

- ☒ Return Receipt (hardcopy) \$ 2.80
- ☐ Return Receipt (electronic) \$
- ☐ Certified Mail Restricted Delivery \$
- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

Sent To

FOX FACTORY HOLDING CORP.

Street and Apt. No., or PO Box No.

5634 HIGHWAY 53

City, State, ZIP+4®

BRASELTON GA 30517

PS Form 3800, April 2015 PSN 7530-02-000-9047

See Reverse for Instructions

Postmark
Here

Zamora v. Fox
Factory Holding
Corp.

7019 2280 0000 7398 6527

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FOX FACTORY, INC.
6634 HIGHWAY 53
BRASELTON GA 30517



9590 9402 4882 9032 7439 94

2. Article Number (Transfer from service label)

7019 2280 0000 7398 6503

COMPLETE THIS SECTION ON DELIVERY**A. Signature**

X

☐ Agent

☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No

3. Service Type

☐ Adult Signature

☐ Adult Signature Restricted Delivery

☒ Certified Mail®

☐ Certified Mail Restricted Delivery

☐ Collect on Delivery

☐ Collect on Delivery Restricted Delivery

☐ Insured Mail

☐ Insured Mail Restricted Delivery
(over \$500)

☐ Priority Mail Express®

☐ Registered Mail™

☐ Registered Mail Restricted
Delivery

☐ Return Receipt for
Merchandise

☐ Signature Confirmation™

☐ Signature Confirmation
Restricted Delivery

PS Form 3811, July 2015 PSN 7530-02-000-9053

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

FOX FACTORY HOLDING CORP.
6634 HIGHWAY 53
BRASELTON GA 30517



9590 9402 4882 9032 7439 87

2. Article Number (Transfer from service label)

7019 2280 0000 7398 6527

PS Form 3811, July 2015 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature [Signature] ☐ Agent ☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Insured Mail Restricted Delivery (over \$500)

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Return Receipt for Merchandise
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt