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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF LOS ANGELES
12

13 JOSE CALDERA, as an aggrieved
employee pursuant to the Private Attorneys
14 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
15 employees,

16 Plaintiff,

17 vs.

18 GLASSWERKS LA, INC., a California
corporation; and DOES 1 through 10,
19 inclusive,

20 Defendants.
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Case No.: 20STCV45749

**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 Jose Caldera, as an aggrieved employee and on behalf of the State of California
2 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 of
9 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 Order
11 were committed, as set forth in this complaint, at any time between one year prior to the filing
12 of the pre-filing written notice to the Labor and Workforce Development Agency (“LWDA”) in this case on September 24, 2020, until judgment (“non-party Aggrieved Employees”).
13 Plaintiff’s share of civil penalties sought in this action does not exceed \$75,000.
14

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

18 3. This Court has jurisdiction over all Defendants because, on information and
19 belief, Defendants are either citizens of California, have sufficient minimum contacts in
20 California, or otherwise intentionally avail themselves of the California market so as to render
21 the exercise of jurisdiction over them by the California courts consistent with traditional notions
22 of fair play and substantial justice. There is no basis for federal diversity jurisdiction in this
23 action given that the State of California, as the real party in interest in this action, is not a
24 “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*, 726
25 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be aggregated
26 to satisfy the amount in controversy requirement for federal diversity jurisdiction in this action,
27 and that diversity jurisdiction cannot be established when Plaintiff’s share of the civil penalties
28 attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

4. Venue is proper in this Court, because Defendants filed Statement of Information forms with the California Secretary of State designating a principal place of business in South Gate, County of Los Angeles, in accordance with California Corporations Code section 2105(a)(3). Venue is also proper in this Court because Defendants employ persons in this county, and employed Plaintiff in this county, and thus a substantial portion of the transactions and occurrences related to this action occurred in this county.

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

THE PARTIES

6. Plaintiff Jose Caldera is a resident of Oxnard, in Ventura County, California. Defendants employed Plaintiff as an hourly paid, non-exempt Receiving Clerk from approximately January 2019 to February 2020. Plaintiff worked for Defendants at their facility in South Gate, California. During his employment, Plaintiff typically worked nine (9) to twelve (12) hours or more per day and five (5) days per week. At the time his employment ended, Plaintiff was compensated approximately \$14.00 per hour. His job duties included, without limitation, answering phone calls, completing and filing paperwork, assisting in roll call, loading and unloading crates, shipping orders, and receiving and processing customer payments.

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

8. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10 were the partners, agents, owners, or managers of GLASSWERKS LA, INC. at all relevant times.

9. Plaintiff is informed and believes, and thereon alleges, that each and all of the acts and omissions alleged herein was performed by, or is attributable to, GLASSWERKS LA, INC.; and/or DOES 1 through 10 (collectively, “Defendants” or “GLASSWERKS”), each

1 acting as the agent, employee, alter ego, and/or joint venturer of, or working in concert with,
2 each of the other co-Defendants and was acting within the course and scope of such agency,
3 employment, joint venture, or concerted activity with legal authority to act on the others' behalf.
4 The acts of any and all Defendants were in accordance with, and represent, the official policy
5 of Defendants.

6 10. At all relevant times, Defendants, and each of them, ratified each and every act
7 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
8 and abetted the acts and omissions of each and all the other Defendants in proximately causing
9 the damages herein alleged.

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

13 **PAGA REPRESENTATIVE ALLEGATIONS**

14 12. Defendants are a fabricator of commercial and heavy-fabricated glass;
15 architectural, tempered, and laminated glass; decorative glass; and other custom glass products.
16 Defendants serve the Southern California and Southern Nevada markets. Upon information and
17 belief, Defendants maintain a single, centralized Human Resources ("HR") department at their
18 corporate headquarters in South Gate, California, which is responsible for the recruiting and
19 hiring of new employees, and communicating and implementing Defendants' company-wide
20 policies, including timekeeping policies and meal and rest period policies, to employees
21 throughout California.

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

1 14. Upon information and belief, Defendants maintain a centralized Payroll
2 department at their corporate headquarters in South Gate, California, which processes payroll
3 for all non-exempt, hourly paid employees working for Defendants at their various locations
4 and jobsites in California, including Plaintiff and other non-party Aggrieved Employees. Based
5 upon information and belief, Defendants issue the same formatted wage statements to all non-
6 exempt, hourly paid employees in California, irrespective of their work locations. Upon
7 information and belief, Defendants process payroll for departing employees in the same manner
8 throughout the State of California, regardless of the manner in which each employee's
9 employment ends.

10 15. Defendants continue to employ non-exempt or hourly paid employees in
11 California.

12 16. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants were advised by skilled lawyers and other professionals, employees and
14 advisors knowledgeable about California labor and wage law, employment and personnel
15 practices, and about the requirements of California law.

16 17. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
17 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
18 were not recorded.

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

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

28 20. 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 receive at least minimum wages for compensation and that they were not receiving at least
3 minimum wages for work that was required to be done off-the-clock. In violation of the
4 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
5 least minimum wages for work done off-the-clock.

6 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
9 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty (30)
10 minute meal periods and that Plaintiff and other non-party Aggrieved Employees were not
11 provided with all meal periods or payment of one (1) additional hour of pay at their regular rates
12 of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal period.

13 22. 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 rest
15 periods in accordance with the Labor Code and applicable IWC Wage Order or payment of one
16 (1) additional hour of pay at their regular rates of pay when they were not authorized and
17 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
18 and other non-party Aggrieved Employees were not authorized and permitted to take compliant
19 rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved Employees
20 with payment of one (1) additional hour of pay at their regular rates of pay when they were not
21 authorized and permitted to take a compliant rest period.

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 complete and accurate wage statements in accordance with California law. In violation
25 of the California Labor Code, Plaintiff and other non-party Aggrieved Employees were not
26 provided complete and accurate wage statements.

27 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that they had a duty to maintain accurate and complete payroll records in

1 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
2 and intentionally failed to do so.

3 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they were required to comply with requests from Plaintiff and other
5 non-party Aggrieved Employees to inspect or receive a copy of their wage records within 21
6 days in accordance with the Labor Code and applicable IWC Wage Order, but willfully,
7 knowingly, and intentionally failed to do so.

8 26. 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 receive copies of instruments that they signed upon request. In violation of the California Labor
11 Code, Defendants denied Plaintiff and other non-party Aggrieved Employees their right to
12 obtain copies of instruments that they signed.

13 27. 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 copies of their personnel records no later than 30 days from the date Defendants receive
16 a written request. In violation of the California Labor Code, Defendants denied Plaintiff and
17 other non-party Aggrieved Employees their right to obtain copies of their personnel records
18 within the statutory time limits.

19 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
21 timely payment of wages during their employment. In violation of the California Labor Code,
22 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
23 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
24 premiums, within permissible time periods.

25 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
26 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
27 timely payment of all wages earned upon termination of employment. In violation of the
28 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive

1 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
2 and/or meal and rest period premiums, within permissible time periods.

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

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

12 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
13 mentioned, Defendants knew or should have known that Defendants had a duty to provide
14 Plaintiff and other non-party Aggrieved Employees with written notice of the material terms of
15 their employment with Defendants as required by the California Wage Theft Prevention Act,
16 but willfully, knowingly, and intentionally failed to do so.

17 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that they had a duty to provide Plaintiff and other non-party Aggrieved
19 Employees with safety devices and safeguards, such as personal protective equipment, to protect
20 their life, safety, and health in the workplace, but willfully, knowingly, and intentionally failed
21 to do so.

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

28 35. At all times herein set forth, PAGA provides that any provision of law under the

1 Labor Code and applicable IWC Wage Order that provides for a civil penalty to be assessed and
2 collected by the LWDA for violations of the California Labor Code and applicable IWC Wage
3 Order may, as an alternative, be recovered by aggrieved employees in a civil action brought on
4 behalf of themselves and other current or former employees pursuant to procedures outlined in
5 California Labor Code section 2699.3.

6 36. PAGA defines an “aggrieved employee” in Labor Code section 2699(c) as “any
7 person who was employed by the alleged violator and against whom one or more of the alleged
8 violations was committed.”

9 37. Plaintiff and other current and former employees of Defendants are “aggrieved
10 employees” as defined by Labor Code section 2699(c) in that they are all Defendants’ current
11 or former employees and one or more of the alleged violations were committed against them.

12 38. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
13 employee, including Plaintiff, may pursue a civil action arising under PAGA after the following
14 requirements have been met:

15 (a) The aggrieved employee shall give written notice by online filing
16 (hereinafter “Employee’s Notice”) to the LWDA and by certified mail to
17 the employer of the specific provisions of the California Labor Code
18 alleged to have been violated, including the facts and theories to support
19 the alleged violations.

20 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
21 2699.3(a) and any employer response to that notice shall be accompanied
22 by a filing fee of seventy-five dollars (\$75).

23 (c) The LWDA shall provide notice (hereinafter “LWDA Notice”) to the
24 employer and the aggrieved employee by certified mail that it does not
25 intend to investigate the alleged violation within sixty (60) calendar days
26 of the postmark date of the Employee’s Notice. Upon receipt of the
27 LWDA Notice, or if the LWDA Notice is not provided within sixty-five
28 (65) calendar days of the postmark date of the Employee’s Notice, the

1 aggrieved employee may commence a civil action pursuant to California
2 Labor Code section 2699 to recover civil penalties in addition to any other
3 penalties to which the employee may be entitled.

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

7 (a) The aggrieved employee or representative shall give written notice by
8 online filing to the LWDA and by certified mail to the employer of the
9 specific provisions of the California Labor Code alleged to have been
10 violated (other than those listed in Section 2699.5), including the facts
11 and theories to support the alleged violation.

12 (b) An aggrieved employee's notice filed with the LWDA pursuant to
13 2699.3(c) and any employer response to that notice shall be accompanied
14 by a filing fee of seventy-five dollars (\$75).

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

23 40. On September 24, 2020, Plaintiff provided written notice by online filing to the
24 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
25 Code alleged to have been violated, including facts and theories to support the alleged
26 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written notice
27 was accompanied with the applicable filing fee of seventy-five dollars (\$75). The LWDA
28 PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned Plaintiff

1 PAGA Case Number LWDA-CM-807535-20. A true and correct copy of Plaintiff's written
2 notice to the LWDA and Defendants dated September 24, 2020, is attached hereto as "Exhibit
3 1."

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

7 42. Thus, Plaintiff has satisfied the administrative prerequisites under California
8 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
9 violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.7, 432, 510,
10 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

11 43. Labor Code section 558(a) provides "[a]ny employer or other person acting on
12 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
13 provision regulating hours and days of work in any order of the Industrial Welfare Commission
14 shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
15 each underpaid employee for each pay period for which the employee was underpaid. . . . (2)
16 For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for
17 each pay period for which the employee was underpaid. . . ." Labor Code section 558(c)
18 provides "[t]he civil penalties provided for in this section are in addition to any other civil or
19 criminal penalty provided by law." Plaintiff, acting in the public interest as a private attorney
20 general, seeks assessment and collection of civil penalties under Labor Code section 558 for
21 himself, all other non-party Aggrieved Employees, and the State of California against
22 Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the applicable
23 IWC wage order. Plaintiff, acting in the public interest as private attorney general, does not
24 seek the recovery of unpaid wages under Labor Code section 558 from Defendants for violations
25 of Labor Code sections 510, 512(a), 516, 1198, and the applicable IWC wage order.

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

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

46. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other non-party Aggrieved Employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

FIRST CAUSE OF ACTION

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

(Against all Defendants)

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

48. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 222.5, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226, 432, 516, 1182.12, 1198.5, 2810.5, 6401, and 6403.

49. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 510, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with all required overtime pay and failure to properly calculate the overtime rates paid to Plaintiff and/or other non-party Aggrieved Employees, as set forth below;

- (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the applicable IWC wage order for Defendants' failure to compensate Plaintiff and other non-party Aggrieved Employees with at least minimum wages for all hours worked as set forth below;
- (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC wage order for Defendants' failure to provide Plaintiff and other non-party Aggrieved Employees with meal periods, as set forth below;
- (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) Violations of Labor Code sections 226, 432, 1198.5, and the applicable IWC wage order for failure to produce copies or allow inspection of Plaintiff's and other non-party Aggrieved Employees' own personnel and other employment records upon written request within the statutory time limits, as set forth below;
- (h) Violation of Labor Code section 204 for failure to pay all earned wages during employment as set forth below;
- (i) Violation of Labor Code sections 201, 202, and 203 for failure to pay all earned wages upon termination as set forth below;
- (j) Violation of Labor Code section 222.5 for failure to compensate other non-party Aggrieved Employees for mandatory physical examinations

and/or drug testing as set forth below;

- (k) Violation of Labor Code section 2802 for failure to reimburse Plaintiff and other non-party Aggrieved Employees for all business expenses necessarily incurred, as set forth below;
- (l) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiff's and other non-party Aggrieved Employees' employment with Defendants, as set forth below; and
- (m) Violation of Labor Code sections 6401 and 6403 for failure to provide safety devices and safeguards, such as personal protective equipment, to Plaintiff and other non-party Aggrieved Employees, as set forth below.

FAILURE TO PAY OVERTIME

VIOLATION OF LABOR CODE SECTIONS 510 AND 1198

50. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 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."

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

52. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiff and other non-party Aggrieved 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) for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek.

53. The applicable IWC Wage Order further provides that Defendants are and were

1 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
2 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
3 An employee's regular rate of pay includes all remuneration for employment paid to, or on
4 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

5 54. California Labor Code section 510 codifies the right to overtime compensation
6 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
7 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the seventh
8 (7th) day of work, and to overtime compensation at twice the employee's regular rate of pay for
9 hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours in a day on
10 the seventh (7th) day of work.

11 55. During the relevant time period, Defendants willfully failed to pay all overtime
12 wages owed to Plaintiff and other non-party Aggrieved Employees. During the relevant time
13 period, Plaintiff and other non-party Aggrieved Employees were not paid overtime premiums
14 for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12)
15 hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were
16 not recorded.

17 56. First, during the relevant period, Defendants had and continue to have, a policy
18 and/or practice of discouraging and impeding Plaintiff and other non-party Aggrieved
19 Employees from recording hours worked that were outside of their scheduled shifts in order to
20 limit the amount of overtime and/or double-time pay employees could accrue. This policy of
21 limiting overtime and/or double-time, coupled with Defendants' practice of understaffing, as
22 well as assigning heavy workloads (*see infra*), led Plaintiff and other non-party Aggrieved
23 Employees to work off-the-clock after their scheduled shift times in order to complete their
24 assigned tasks. For example, Plaintiff and other non-party Aggrieved Employees were
25 instructed by their supervisors to clock out when they had worked 12 hours in a day and continue
26 working in order to limit the amount of double-time wages that they would otherwise be paid.
27 Plaintiff would work up to five (5) hours per week off-the-clock as a result of Defendants'
28 policy of limiting overtime and/or double-time accrual. Thus, Defendants failed to track this

1 time spent working after scheduled shifts, and Plaintiff and other non-party Aggrieved
2 Employees received no compensation for this time.

3 57. Second, during the relevant period, Defendants had, and continue to have, a
4 company-wide policy and/or practice of understaffing their worksites while assigning heavy
5 workloads, resulting in a failure to provide Plaintiff and other non-party Aggrieved Employees
6 with adequate meal period coverage. Plaintiff and other non-party Aggrieved Employees
7 worked through meal periods or had their meal periods cut short or interrupted because there
8 were not enough employees on duty to handle the workload. For example, approximately two
9 (2) times per week, Plaintiff would have his meal periods interrupted or cut short by Defendants'
10 supervisors and would be required to assist drivers with processing customer payments. Thus,
11 Plaintiff and other non-party Aggrieved Employees missed and/or had meal periods interrupted
12 in order to complete their assigned workloads. Defendants did not pay Plaintiff and other non-
13 party Aggrieved Employees for the time they continued to perform tasks during meal periods.
14 Defendants also had a company-wide practice and/or policy of requiring all employees,
15 including Plaintiff and other non-party Aggrieved Employees, to carry company phones so that
16 other employees and management could communicate with them as needed. Defendants knew
17 or should have known that other non-party Aggrieved Employees were being made to
18 communicate with other employees and/or supervisors while clocked out for meal periods in
19 order to meet Defendants' expectations, but failed to compensate them for this off-the-clock
20 work.

21 58. Moreover, Defendants' company-wide timekeeping system further prevented
22 Plaintiff and other non-party Aggrieved Employees from recording all hours worked when their
23 meal periods were shortened or interrupted, because the system locked Plaintiff and other non-
24 party Aggrieved Employees out once they clocked out for a meal period and would not permit
25 them to clock back in from a meal before 30 minutes elapsed. Consequently, Plaintiff and other
26 non-party Aggrieved Employees performed work during meal periods for which they were not
27 paid.

28 59. Defendants knew or should have known that, as a result of these company-wide

1 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
2 their assigned duties off-the-clock and during meal periods, and were suffered or permitted to
3 perform work for which they were not paid. Defendants also knew, or should have known, that
4 they did not compensate Plaintiff and other non-party Aggrieved Employees applicable
5 overtime rates of pay for overtime hours that they worked.

6 60. Because Plaintiff and other non-party Aggrieved Employees regularly worked
7 shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-
8 clock work qualified for overtime premium pay. Therefore, Plaintiff and other non-party
9 Aggrieved Employees were not paid overtime wages for all of the overtime hours they actually
10 worked. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees the
11 balance of overtime compensation, as required by California law, violates the provisions of
12 California Labor Code sections 510 and 1198.

13 61. Furthermore, Defendants did not pay Plaintiff and/or other non-party Aggrieved
14 Employees the correct overtime rate for the recorded overtime hours that they generated. In
15 addition to an hourly wage, Defendants paid Plaintiff and/or other non-party Aggrieved
16 Employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration.
17 However, in violation of the California Labor Code, Defendants failed to incorporate all
18 compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of
19 remuneration, into the calculation of the regular rate of pay for purposes of calculating the
20 overtime wage rate. Therefore, during times when Plaintiff and/or other non-party Aggrieved
21 Employees worked overtime and received these other forms of pay, Defendants failed to pay all
22 overtime wages by paying a lower overtime rate than required.

23 62. Specifically, Defendants paid Plaintiff and/or other non-party Aggrieved
24 Employees nondiscretionary bonuses and/or incentive pay for meeting certain metrics. On
25 information and belief, these nondiscretionary bonuses were listed on Plaintiff's and/or other
26 non-party Aggrieved Employees' wage statements as "Monthly Incentive." During pay periods
27 that Plaintiff and/or other non-party Aggrieved Employees were paid overtime and double-time
28 wages, Defendants failed to incorporate the nondiscretionary bonuses and/or incentive pay into

1 Plaintiff's and/or other non-party Aggrieved Employees' regular rate of pay and, as a result,
2 paid them at incorrect and lower rates of pay for overtime hours worked. Specifically,
3 Defendants paid Plaintiff and/or and other non-party Aggrieved Employees 1.5 times their
4 hourly rate of pay instead of 1.5 times their regular rate of pay. Defendants' failure to properly
5 calculate the overtime and double-time rates of pay based on all remuneration paid has resulted
6 in an underpayment of overtime and double-time wages to Plaintiff and/or and other non-party
7 Aggrieved Employees on a company-wide basis

8 63. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
9 the balance of overtime compensation as required by California law, violates the provisions of
10 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
11 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
12 2699(a), (f), and (g).

13 **FAILURE TO PAY MINIMUM WAGES**

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

15 64. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
16 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage to
17 be paid to employees, and the payment of a wage less than the minimum so fixed is unlawful.
18 Compensable work time is defined by the applicable wage order as "the time during which an
19 employee is subject to the control of an employer, and includes all the time the employee is
20 suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8,
21 § 11010(2)(G) (defining "Hours Worked").

22 65. As set forth above, during the relevant time period, as a result of Defendants'
23 policy of limiting the amount of overtime and/or double-time employees could accrue, coupled
24 with the practice of understaffing, assignment of heavy workloads, and subsequent lack of meal
25 period coverage, Plaintiff and other non-party Aggrieved Employees were impeded from taking
26 all uninterrupted meal periods to which they were entitled and were required to work off-the-
27 clock after their scheduled shifts. Additionally, Defendants required Plaintiff and other non-
28 party Aggrieved Employees to carry company phones during meal periods, but did not pay other

1 non-party Aggrieved Employees for the time they spent responding calls and continuing to
2 perform work-related tasks while clocked out. And, as described above, Defendants'
3 timekeeping system did not permit Plaintiff and other non-party Aggrieved Employees to clock
4 back in early when their meal periods were interrupted or cut short.

5 66. Moreover, Defendants implemented, on a company-wide basis, an employer-
6 imposed requirement that other non-party Aggrieved Employees undergo a mandatory drug test
7 and/or physical examination. At all times, Defendants were in control of scheduling the date
8 and time for the testing and/or examinations, selecting the provider/facility where the testing
9 and/or examinations were to take place, and determining the scope of the testing and/or
10 examinations. Defendants gave other non-party Aggrieved Employees strict instructions to
11 obtain drug testing and/or physical examinations, and other non-party Aggrieved Employees
12 underwent the testing and/or examinations for the sole benefit of Defendants. Other non-party
13 Aggrieved Employees were required to travel in their own personal vehicles or obtain alternate
14 transportation and spend time undergoing Defendants' mandatory drug testing and/or physical
15 examinations. However, Defendants did not compensate other non-party Aggrieved Employees
16 for the time they spent traveling to and from the medical facilities and for the time they spent
17 undergoing the drug testing and/or physical examinations.

18 67. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
19 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did not
20 qualify for overtime premium payment, Defendants did not pay at least minimum wages for
21 those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194,
22 1197, and 1198.

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

27 ///

28 ///

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

69. At all relevant times herein set forth, the applicable IWC Wage Order(s) and California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and non-party Aggrieved Employees' employment by Defendants.

70. At all relevant times herein set forth, California Labor Code section 512(a) provides that 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 a 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).

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

72. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198, 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.

73. As stated, Defendants had, and continue to have, a uniform policy and/or practice of understaffing while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Plaintiff and other non-party Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of Defendants' practices and/or policies, Plaintiff and other non-party 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, Plaintiff's meal periods

1 were interrupted or shortened twice per week by requests from Defendants' supervisors to assist
2 drivers with processing customer payments. This task could take up to 15 minutes to complete
3 each instance. Also, as mentioned above, Defendants had a company-wide policy and/or
4 practice of requiring that Plaintiff and other non-party Aggrieved Employees carry company
5 phones on their persons so that other employees and management could communicate with
6 them. As a result of Defendants' policy and/or practice that employees carry and respond to
7 company phones at all times, other non-party Aggrieved Employees were compelled to perform
8 work-related duties during their unpaid meal periods.

9 74. Additionally, as stated, Defendants implemented an electronic timekeeping
10 system that locked out Plaintiff and other non-party Aggrieved Employees and prevented them
11 from clocking in early before the end of their 30-minute meal period. As a result of Defendants'
12 timekeeping system, Plaintiff and other non-party Aggrieved Employees were prevented from
13 accurately recording when they had to return early from a meal period so that they could be
14 compensated for that time. Moreover, Defendants did not provide Plaintiff and other non-party
15 Aggrieved Employees with second 30-minute meal periods on days that they worked in excess
16 of ten (10) hours in one day. Plaintiff and other non-party Aggrieved Employees worked shifts
17 in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period.
18 Plaintiff and other non-party Aggrieved Employees did not sign valid meal period waivers on
19 days that they were entitled to meal periods and were not relieved of all duties.

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

26 76. Furthermore, Defendants engaged in a company-wide practice and/or policy of
27 not paying all meal period premiums owed when compliant meal periods are not provided.
28 Because of this practice and/or policy, Plaintiff and other non-party Aggrieved Employees have

1 not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the
2 extent that Defendants did pay Plaintiff and/or other non-party Aggrieved Employees for
3 missed, late, and interrupted meal periods, Defendants did not pay Plaintiff and/or other non-
4 party Aggrieved Employees at the correct rate of pay for premium wages because Defendants
5 systematically failed to include all forms of compensation, such as incentive pay and/or
6 nondiscretionary bonuses, in the regular rate of pay.

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

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

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

15 78. At all relevant times herein set forth, the applicable IWC Wage Order and
16 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff's and other
17 non-party Aggrieved Employees' employment by Defendants.

18 79. At all relevant times, the applicable IWC Wage Order provides that "[e]very
19 employer shall authorize and permit all employees to take rest periods, which insofar as
20 practicable shall be in the middle of each work period" and that the "rest period time shall be
21 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
22 hours or major fraction thereof" unless the total daily work time is less than three and one-half
23 (3½) hours.

24 80. At all relevant times, California Labor Code section 226.7 provides that no
25 employer shall require an employee to work during any rest period mandated by an applicable
26 order of the California IWC. To comply with its obligation to authorize and permit rest periods
27 under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer
28 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 v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

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

82. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party 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, Defendants’ company-wide policy and practice of understaffing and assigning heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty to take their rest periods. Moreover, Defendants’ policy and/or practice of requiring Plaintiff and other non-party Aggrieved Employees to carry company phones and respond to calls also prevented other non-party Aggrieved Employees from being relieved of all duty to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take compliant rest periods.

83. Furthermore, upon information and belief, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved Employees remain on the work premises during their rest periods. Specifically, Plaintiff was required to take his rest periods at his desk in order to answer incoming customer calls. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied the ability to use rest periods freely for their own purposes. Thus, Defendants effectively maintained control over Plaintiff and other non-party Aggrieved Employees during rest periods and/or caused them to perform work during rest periods.

1 84. As a result of Defendants' practices and policies, Plaintiff and other non-party
2 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess
3 of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were
4 entitled. For example, during his employment, Plaintiff missed his rest periods due to the heavy
5 workload and the lack of coverage for rest periods.

6 85. Defendants also have engaged in a company-wide practice and/or policy of not
7 paying all rest period premiums owed when compliant rest periods are not authorized and
8 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
9 Employees have not received premium pay for all missed rest periods. Alternatively, to the
10 extent that Defendants did pay Plaintiff and/or other non-party Aggrieved Employees one (1)
11 additional hour of premium pay for missed rest periods, Defendants did not pay Plaintiff and/or
12 other non-party Aggrieved Employees at the correct rate of pay for premium wages because
13 Defendants did not include all forms of compensation, such as incentive pay, nondiscretionary
14 bonuses, and/or other forms of remuneration, in the regular rate of pay.

15 86. Defendants' conduct violates the applicable IWC Wage Order and California
16 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved Employees
17 are therefore entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
18 2699(a), (f), and (g).

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

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

26 88. During the relevant time period, Defendants have knowingly and intentionally
27 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
28 inaccurate wage statements. For example, Defendants issued uniform wage statements to

1 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
2 earned; total hours worked; net wages earned; and all applicable hourly rates in effect during
3 the pay period, including overtime rates of pay, and the corresponding number of hours worked
4 at each hourly rate. Specifically, Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5),
5 and 226(a)(9).

6 89. Because Defendants did not record the time Plaintiff and other non-party
7 Aggrieved Employees spent working off-the-clock, Defendants did not list the correct amount
8 of gross wages and net wages earned by Plaintiff and other non-party Aggrieved Employees in
9 compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason,
10 Defendants failed to accurately list the total number of hours worked by Plaintiff and other non-
11 party Aggrieved Employees, in violation of section 226(a)(2), and failed to list the applicable
12 hourly rates of pay in effect during the pay period and the corresponding accurate number of
13 hours worked at each hourly rate, in violation of section 226(a)(9).

14 90. Additionally, because Defendants did not calculate Plaintiff's and/or other non-
15 party Aggrieved Employees' regular rate of pay correctly for purposes of paying overtime
16 wages, Defendants did not list the correct amount of gross wages earned by Plaintiff and/or
17 other non-party Aggrieved Employees in compliance with section 226(a)(1) and did not list the
18 correct amount of net wages earned by Plaintiff and/or other non-party Aggrieved Employees
19 in violation of section 226(a)(5). Defendants also failed to correctly list all applicable hourly
20 rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of
21 pay for premium wages, in violation of section 226(a)(9).

22 91. The wage statement deficiencies also include, among other things, failing to list
23 the number of piece-rate units earned and any applicable piece rate if the employee is paid on a
24 piece-rate basis; failing to list all deductions; failing to list the name of the employee and only
25 the last four digits of his or her social security number or an employee identification number
26 other than a social security number; failing to list the name and address of the legal entity that
27 is the employer; failing to list the inclusive dates of the period for which aggrieved employees
28 were paid; and/or failing to state all hours worked as a result of not recording or stating the

1 hours they worked off-the-clock.

2 92. 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 set
4 forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment
5 of any employees for longer hours than those fixed by the order or under conditions of labor
6 prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers
7 are required to keep accurate time records showing when the employee begins and ends each
8 work period and meal period. During the relevant time period, Defendants failed, on a
9 company-wide basis, to keep accurate records of work period and meal period start and stop
10 times for Plaintiff and other non-party Aggrieved Employees, in violation of section 1198.
11 Furthermore, in light of Defendants’ failure to provide Plaintiff and other non-party Aggrieved
12 Employees with second 30-minute meal periods to which they were entitled, Defendants kept
13 no records of meal start and end times for second meal periods.

14 93. California Labor Code section 1174(d) provides that “[e]very person employing
15 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
16 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
17 plants or establishments at which employees are employed, payroll records showing the hours
18 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
19 applicable piece rate paid to, employees employed at the respective plants or
20 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
21 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-party
22 Aggrieved Employees showing the daily hours they worked and the wages paid thereto as a
23 result of failing to record the off-the-clock hours that they worked.

24 94. Because Defendants’ violations of 226(a) and 1174(d) were committed against
25 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
26 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226.3, 1174.5,
27 and/or 2699(a), (f), and (g).

28 ///

**FAILURE TO PRODUCE AND/OR PERMIT INSPECTION OF RECORDS AND
INSTRUMENTS SIGNED**

VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198

95. At all relevant times herein, California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee's request.

96. At all times relevant herein, California Labor Code section 432 states, "[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request." California Labor Code section 433 states, "[a]ny person violating this article is guilty of a misdemeanor."

97. At all times relevant herein, California Labor Code section 1198.5 requires that an employer provide a copy of an employee's personnel record no later than 30 days from the date the employer receives a written request.

98. At all times relevant herein, the applicable IWC Wage Order No. 1-2001, section 7(A), provides that "[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request." IWC Wage Order No. 1-2001, section 7(C), also provides, "[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location

1 within the State of California. An employee's records shall be available for inspection by the
2 employee upon reasonable request."

3 99. During the relevant time period, Plaintiff and other non-party Aggrieved
4 Employees sent Defendants reasonable written requests for documents and records relating to
5 their employment with Defendants, and Defendants failed and/or refused to produce for
6 inspection and copying or otherwise permit inspection and copying of documents and records
7 relating to Plaintiff's and other non-party Aggrieved Employees' employment. For example,
8 on July 28, 2020, and September 17, 2020, Plaintiff sent written requests to Defendants via
9 FedEx overnight mail. On July 29, 2020, and September 18, 2020, respectively, FedEx
10 confirmed Defendants received Plaintiff's written requests for records. To date, Defendants
11 have failed to even respond to Plaintiff's written requests for his records. Thus, over 30 days
12 have passed from the dates that Plaintiff sent Defendants reasonable written requests for
13 documents and records relating to his employment. On information and belief, Defendants have
14 similarly failed to provide other non-party Aggrieved Employees with copies of their personnel
15 files upon written request within the statutory time limits. Defendants' failure and/or refusal to
16 produce Plaintiff's and other non-party Aggrieved Employees' personnel files within the
17 statutory limits violates Labor Code sections 226(b), 432, 1198.5, and the applicable IWC Wage
18 Order.

19 100. Because Defendants' violations of 226(f) and 1198.5 were committed against
20 Plaintiff and other non-party Aggrieved Employees, Plaintiff and other non-party Aggrieved
21 Employees are entitled to recover civil penalties pursuant to Labor Code sections 226(f),
22 1198.5(k), and/or 2699(a), (f), and (g).

23 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

24 **VIOLATION OF LABOR CODE SECTION 204**

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

1 performed. Labor Code section 204 further provides that all wages earned by any person in any
2 employment between the 16th and the last day, inclusive, of any calendar month, other than
3 those wages due upon termination of an employee, are due and payable between the 1st and the
4 10th day of the following month.

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

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

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

17 **FAILURE TO PAY WAGES UPON TERMINATION**

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

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

26 106. On information and belief, Defendants have a company-wide practice or policy
27 of paying departing employees their final wages on the next regular pay cycle, instead of
28 adhering to the time requirements set forth in Labor Code sections 201 and 202. For example,

1 Plaintiff was terminated on or about February 25, 2020. However, Defendants did not provide
2 Plaintiff with his final paycheck until the final week of March 2020. Thus, Defendants failed
3 to pay Plaintiff his final wages immediately, in violation of Labor Code section 201.

4 107. Additionally, Defendants willfully failed to pay Plaintiff and other non-party
5 Aggrieved Employees who are no longer employed by Defendants all their earned wages,
6 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
7 premium wages, either at the time of discharge, or within seventy-two (72) hours of their leaving
8 Defendants' employ in violation of California Labor Code sections 201, 202, and 203.

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

15 **FAILURE TO PAY COSTS OF MEDICAL OR PHYSICAL EXAMINATION**
16 **VIOLATION OF LABOR CODE SECTION 222.5**

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

20 110. During the relevant time period, Defendants implemented, on a company-wide
21 basis, an employer-imposed requirement that other non-party Aggrieved Employees undergo
22 mandatory drug testing and/or physical examinations, but required them to do so at their own
23 expense. As stated, Defendants had a company-wide policy requiring that other non-party
24 Aggrieved Employees travel to a specified medical facility on their own time and use their own
25 means of transportation to undergo drug testing and/or physical examinations. At all times,
26 Defendants were in control of scheduling the date and time for the testing and/or examinations,
27 selecting the provider/facility where the testing and/or examinations were to take place, and
28 determining the scope of the testing and/or examinations. However, Defendants did not

1 compensate other non-party Aggrieved Employees for the time they spent traveling to and from
2 the medical facilities, for the time they spent undergoing the drug testing and/or physical
3 examinations, or reimburse them for the travel expenses they incurred getting to and from the
4 medical facilities. Defendants' policy and/or practice of not paying for all costs other non-party
5 Aggrieved Employees incurred obtaining mandatory drug testing and/or physical examinations
6 is in violation of California Labor Code section 222.5.

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

9 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

10 **VIOLATION OF LABOR CODE SECTION 2802**

11 1. the examinations and/or testing for the sole benefit of Defendants.

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

27 2. First, during the relevant time period, Defendants, on a company-wide basis,
28 mandated that Plaintiff and other non-party Aggrieved Employees purchase special safety shoes

1 such as steel-toed boots, which they were required to wear while at work. Plaintiff and other
2 non-party Aggrieved Employees purchased steel-toed boots to wear inside Defendants'
3 facilities, but were not fully reimbursed for these costs.

4 3. Second, Defendants, on a company-wide basis, required Plaintiff and other non-
5 party Aggrieved Employees to purchase basic office supplies that were necessary for the
6 completion of assigned tasks. For example, Plaintiff was required to buy pens; throughout his
7 employment, he estimates spending approximately \$40.00 on these expenses. Defendants failed
8 to provide basic supplies to Plaintiff and other non-party Aggrieved Employees, forcing them
9 to procure their own, and failed to reimburse Plaintiff and other non-party Aggrieved Employees
10 for the costs of these supplies.

11 4. Third, during the relevant time period, as stated, Defendants had a company-wide
12 policy of requiring other non-party Aggrieved Employees to travel to medical facilities on their
13 own time and using their personal vehicles or alternate transportation to obtain mandatory drug
14 testing and/or physical examinations, but did not reimburse them for their travel expenses,
15 including mileage. At all times, Defendants were in control of scheduling the date and time for
16 the testing and/or physical examinations, selecting the provider or facility where the testing
17 and/or physical examinations were to take place, and determining the scope of the testing and/or
18 physical examinations. Defendants gave other non-party Aggrieved Employees strict
19 instructions to obtain drug testing and/or physical examinations, and other non-party Aggrieved
20 Employees underwent required other non-party Aggrieved Employees to use their own vehicles
21 or obtain alternate transportation to undergo drug testing and/or physical examinations,
22 Defendants never reimbursed them for their travel expenses.

23 5. Defendants could have provided Plaintiff and other non-party Aggrieved
24 Employees with the actual tools for use on the job, such as steel-toed boots, office supplies, and
25 company vehicles. Or, Defendants could have reimbursed employees for the costs of steel-toed
26 boots, office supplies, mileage, and travel expenses. Instead, Defendants passed these operating
27 costs off onto Plaintiff and other non-party Aggrieved Employees. At all relevant times,
28 Plaintiff did not earn at least two (2) times the minimum wage.

1 6. Defendants' company-wide policy and/or practice of passing on their operating
2 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
3 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and other
4 non-party Aggrieved Employees for necessary business-related expenses and costs.

5 7. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
6 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

7 **FAILURE TO PROVIDE WRITTEN NOTICE OF MATERIAL TERMS OF**
8 **EMPLOYMENT - VIOLATION OF LABOR CODE SECTION 2810.5(a)(1)(A)-(C)**

9 8. California's Wage Theft Prevention Act was enacted to ensure that employers
10 provide employees with basic information material to their employment relationship at the time
11 of hiring, and to ensure that employees are given written and timely notice of any changes to
12 basic information material to their employment. Codified at California Labor Code section
13 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must
14 provide written notice to employees containing basic and material payroll information,
15 including, among other things, the rate(s) of pay and basis thereof, whether paid by the hour,
16 shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the
17 regular payday designated by the employer, and any allowances claims as part of the minimum
18 wage, including meal or lodging allowances. Labor Code section 2810.5(a)(1)(A)-(C).

19 9. During the relevant time period, Defendants failed to provide Plaintiff and other
20 non-party Aggrieved Employees with written notice that lists all the requisite information set
21 forth in Labor Code section 2810.5(a)(1)(A)-(C).

22 10. Defendants' failure to provide Plaintiff and other non-party Aggrieved
23 Employees with written notice of basic information regarding their employment with
24 Defendants is in violation of Labor Code section 2810.5. Plaintiff and other non-party
25 Aggrieved Employees are therefore entitled to recover civil penalties pursuant to Labor Code
26 sections 2699(a), (f), and (g).

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1 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

2 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

3 11. At all times herein set forth, California Labor Code section 6401 provides that
4 employers must furnish and use safety devices and safeguards, and adopt and use practices,
5 means, methods, operations, and processes which are reasonably adequate to render the
6 employment and place of employment safe and healthy. California Labor Code Section 6401
7 further provides that an employer must do everything reasonably necessary to protect the life,
8 safety and health of its employees. California Labor Code section 6403(a) requires that
9 employers provide and use safety devices and safeguards reasonably adequate to render the
10 employment and place of employment safe.

11 12. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
12 party Aggrieved Employees with personal protective equipment, such as steel-toed boots, to
13 keep them safe in the workplace. Despite the fact that Defendants required employees to wear
14 certain personal protective equipment, including steel-toed boots, Defendants failed to provide
15 such reasonably necessary equipment to Plaintiff and other non-party Aggrieved Employees to
16 keep them safe.

17 13. Defendants' failure to provide Plaintiff and other non-party Aggrieved
18 Employees with safety devices and safeguards for the workplace violates Labor Code sections
19 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
20 recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

21 **REQUEST FOR JURY TRIAL**

22 Plaintiff requests a trial by jury.

23 **PRAYER FOR RELIEF**

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

26 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
27 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

28 ///

As to the First Cause of Action

2. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 226, 432 and 1198.5 (by failing to produce copies or allow inspection of records and instruments signed); 204 (by failing timely to pay all earned wages during employment); 201, 202, and 203 (by failing timely to pay all earned wages upon termination); 222.5 (by failing to compensate for mandatory physical examinations and/or drug testing); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to provide written notice of information material to employment); and 6401 and 6403 (by failing to provide safety devices and safeguards).

3. For civil penalties, pursuant to California Labor Code sections 210, 226, 226.3, 256, 558, 1174.5, 1198.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, 2810.5, 6401, and 6403;

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, 226.7, 432, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

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

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

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4 Dated: November 30, 2020

Respectfully submitted,

Capstone Law APC

6
7 By: 

8 Bevin Allen Pike
9 Orlando Villalba
Daniel Jonathan
Trisha K. Monesi

10 Attorneys for Plaintiff Jose Caldera
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EXHIBIT “1”



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Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
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Anthony.Castillo@capstonelawyers.com

September 24, 2020

VIA ONLINE SUBMISSION

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

Subject: *Jose Caldera v. Glasswerks LA, Inc.*

Dear PAGA Administrator:

This office represents Jose Caldera in connection with his claims under the California Labor Code. Mr. Caldera was an employee of GLASSWERKS LA, INC. ("GLASSWERKS").

The employers may be contacted directly at the addresses below:

GLASSWERKS LA, INC.
8600 RHEEM AVE
SOUTH GATE CA 90280

Mr. Caldera 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"). Mr. Caldera seeks relief on behalf of himself, the State of California, and other persons who are or were employed by GLASSWERKS 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.

GLASSWERKS employed Mr. Caldera as an hourly paid, non-exempt employee from approximately January 2019 to February 2020. Mr. Caldera worked for GLASSWERKS as a Receiving Clerk at the GLASSWERKS facility in South Gate, California. During his employment, Mr. Caldera typically worked nine (9) to twelve (12) hours or more per day, five (5) days per week, from 9:00 a.m. to 9:30 p.m. At the time his employment ended, Mr. Caldera was compensated approximately \$14.00 per hour. His job duties included, without limitation, answering phone calls, completing and filing paperwork, assisting in roll call, loading and unloading crates, shipping orders, and receiving and processing customer payments.

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

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

GLASSWERKS LA, INC. is a California corporation and is a fabricator of commercial and heavy-fabricated glass; architectural, tempered, and laminated glass; decorative glass; and other custom glass products. GLASSWERKS serves the Southern California and Southern Nevada markets. Upon information and belief, GLASSWERKS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in South Gate, California, for all non-exempt, hourly paid employees working for GLASSWERKS in California, including Mr. Caldera and other aggrieved employees. At all relevant times, GLASSWERKS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Caldera and other aggrieved employees, regardless of its location or position.

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

GLASSWERKS willfully failed to pay all overtime wages owed to Mr. Caldera and other aggrieved employees. During the relevant time period, Mr. Caldera 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

¹ These facts, theories, and claims are based on Mr. Caldera’s experience and counsel’s review of those records currently available relating to Mr. Caldera’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, Mr. Caldera reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

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.

First, during the relevant period, GLASSWERKS had and continues to have, a policy and/or practice of discouraging and impeding Mr. Caldera and other aggrieved employees from recording hours worked that were outside of their scheduled shifts in order to limit the amount of overtime and/or double-time pay employees could accrue. This policy of limiting overtime and/or double-time, coupled with GLASSWERKS's practice of understaffing, as well as assigning heavy workloads (*see infra*), led Mr. Caldera and other aggrieved employees to work off-the-clock after their scheduled shift times in order to complete their assigned tasks. For example, Mr. Caldera and other aggrieved employees were instructed by their supervisors to clock out when they had worked 12 hours in a day and continue working in order to limit the amount of double-time wages that they would otherwise be paid. Mr. Caldera would work up to five (5) hours per week off-the-clock as a result of GLASSWERKS's policy of limiting overtime and/or double-time accrual. Thus, GLASSWERKS failed to track this time spent working after scheduled shifts, and Mr. Caldera and other aggrieved employees received no compensation for this time.

Second, during the relevant period, GLASSWERKS had, and continues to have, a company-wide policy and/or practice of understaffing its worksites while assigning heavy workloads, resulting in a failure to provide Mr. Caldera and other aggrieved employees with adequate meal period coverage. Mr. Caldera and other aggrieved employees worked through meal periods or had their meal periods cut short or interrupted because there were not enough employees on duty to handle the workload. For example, approximately two (2) times per week, Mr. Caldera would have his meal periods interrupted or cut short by GLASSWERKS's supervisors and would be required to assist drivers with processing customer payments. Thus, Mr. Caldera and other aggrieved employees missed and/or had meal periods interrupted in order to complete their assigned workloads. GLASSWERKS did not pay Mr. Caldera and other aggrieved employees for the time they continued to perform tasks during meal periods. GLASSWERKS also had a company-wide practice and/or policy of requiring all employees, including Mr. Caldera and other aggrieved employees, to carry company phones so that other employees and management could communicate with them as needed. GLASSWERKS knew or should have known that other aggrieved employees were being made to communicate with other employees and/or supervisors while clocked out for meal periods in order to meet GLASSWERKS's expectations, but failed to compensate them for this off-the-clock work.

Moreover, GLASSWERKS's company-wide timekeeping system further prevented Mr. Caldera and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked Mr. Caldera and other aggrieved employees out once they clocked out for a meal period and would not permit them to clock back in from a meal before 30 minutes elapsed. Consequently, Mr. Caldera and other aggrieved employees performed work during meal periods for which they were not paid.

GLASSWERKS knew or should have known that, as a result of these company-wide practices and/or policies, Mr. Caldera and other aggrieved employees were performing their assigned duties off-the-clock and during meal periods, and were suffered or permitted to perform work for which they were not paid. GLASSWERKS also knew, or should have known, that it did not compensate Mr. Caldera and other aggrieved employees applicable overtime rates of pay for overtime hours that they worked.

Because Mr. Caldera and other aggrieved employees regularly 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, Mr. Caldera and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. GLASSWERKS's failure to pay Mr. Caldera and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, GLASSWERKS did not pay Mr. Caldera and/or other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, GLASSWERKS paid Mr. Caldera and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GLASSWERKS failed to incorporate all compensation, including 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 Mr. Caldera and/or other aggrieved employees worked overtime and received these other forms of pay, GLASSWERKS failed to pay all overtime wages by paying a lower overtime rate than required.

Specifically, GLASSWERKS paid Mr. Caldera and/or other aggrieved employees nondiscretionary bonuses and/or incentive pay for meeting certain metrics. On information and belief, these nondiscretionary bonuses were listed on Mr. Caldera's and/or other aggrieved employees' wage statements as "Monthly Incentive." During pay periods that Mr. Caldera and/or other aggrieved employees were paid overtime and double-time wages, GLASSWERKS failed to incorporate the nondiscretionary bonuses and/or incentive pay into Mr. Caldera's and/or other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, GLASSWERKS paid Mr. Caldera and/or and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. GLASSWERKS's failure to properly calculate the overtime and double-time rates of pay based on all remuneration paid has resulted in an underpayment of overtime and double-time wages to Mr. Caldera and/or and other aggrieved employees on a company-wide basis.

Mr. Caldera 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, during the relevant time period, as a result of GLASSWERKS's policy of limiting the amount of overtime and/or double-time employees could accrue, coupled with the practice of understaffing, assignment of heavy workloads, and subsequent lack of meal period coverage, Mr. Caldera and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock after their scheduled shifts. Additionally, GLASSWERKS required Mr. Caldera and other aggrieved employees to carry company phones during meal periods, but did not pay other aggrieved employees for the time they spent responding calls and continuing to perform work-related tasks while clocked out. And, as

described above, GLASSWERKS's timekeeping system did not permit Mr. Caldera and other aggrieved employees to clock back in early when their meal periods were interrupted or cut short.

Moreover, GLASSWERKS implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo a mandatory drug test and/or physical examination. At all times, GLASSWERKS was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. GLASSWERKS 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 GLASSWERKS. Other aggrieved employees were required to travel in their own personal vehicles or obtain alternate transportation and spend time undergoing GLASSWERKS's mandatory drug testing and/or physical examinations. However, GLASSWERKS 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 drug testing and/or physical examinations.

Thus, GLASSWERKS 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, GLASSWERKS 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, GLASSWERKS regularly failed to pay at least minimum wages to Mr. Caldera 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.

Mr. Caldera 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, GLASSWERKS has, and continues to have, a uniform policy and/or practice of company-wide policy and/or practice of understaffing while simultaneously assigning heavy workloads, which

resulted in a lack of meal period coverage and prevented Mr. Caldera and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result of GLASSWERKS's practices and/or policies, Mr. Caldera and 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, Mr. Caldera's meal periods were interrupted or shortened twice per week by requests from GLASSWERKS's supervisors to assist drivers with processing customer payments. This task could take up to 15 minutes to complete each instance. Also, as mentioned above, GLASSWERKS had a company-wide policy and/or practice of requiring that Mr. Caldera and other aggrieved employees carry company phones on their persons so that other employees and management could communicate with them. As a result of GLASSWERKS's policy and/or practice that employees carry and respond to radios at all times, other aggrieved employees were compelled to perform work-related duties during their unpaid meal periods.

Additionally, as stated, GLASSWERKS implemented an electronic timekeeping system that locked out Mr. Caldera and other aggrieved employees and prevented them from clocking in early before the end of their 30-minute meal period. As a result of GLASSWERKS's timekeeping system, Mr. Caldera and other aggrieved employees were prevented from accurately recording when they had to return early from a meal period so that they could be compensated for that time. Moreover, GLASSWERKS did not provide Mr. Caldera and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Caldera and other aggrieved employees worked shifts in excess of ten (10) hours without receiving an uninterrupted second 30-minute meal period. Mr. Caldera 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.

GLASSWERKS knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Caldera and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. GLASSWERKS further knew or should have known that it did not pay Mr. Caldera and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, GLASSWERKS 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, Mr. Caldera and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that GLASSWERKS did pay meal period premium wages to Mr. Caldera and/or other aggrieved employees, it did so at the incorrect rates. Because GLASSWERKS did not properly calculate Mr. Caldera's and/or other aggrieved employees' regular rates of pay by including all remunerations, such as 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.

Accordingly, GLASSWERKS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Caldera 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, GLASSWERKS regularly failed to authorize and permit Mr. Caldera 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, GLASSWERKS's company-wide policy and practice of understaffing and assigning heavy workloads, prevented Mr. Caldera and other aggrieved employees from being relieved of all duty to take their rest periods. Moreover, GLASSWERKS's policy and/or practice of requiring Mr. Caldera and other aggrieved employees to carry company phones and respond to calls also prevented other aggrieved employees from being relieved of all duty to take compliant rest periods. GLASSWERKS also failed to schedule rest periods, which, coupled with GLASSWERKS's failure to provide adequate rest period coverage, further led to Mr. Caldera and other aggrieved employees not being authorized and permitted to take compliant rest periods.

Additionally, during the relevant time period, GLASSWERKS maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Caldera and other aggrieved employees remain on the work premises during their rest periods. Specifically, Mr. Caldera was required to take his rest periods at his desk in order to answer incoming customer calls. Because Mr. Caldera and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use rest periods freely for their own purposes. Thus, GLASSWERKS effectively maintained control over Mr. Caldera and other aggrieved employees during rest periods and/or caused them to perform work during rest periods.

As a result of GLASSWERKS's practices and policies, Mr. Caldera and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his employment, Mr. Caldera missed his rest periods due to the heavy workload and the lack of coverage for rest periods.

GLASSWERKS 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. Because of

this practice and/or policy, Mr. Caldera and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that GLASSWERKS did pay rest period premium wages to Mr. Caldera and/or other aggrieved employees, it did so at the incorrect rates. Because GLASSWERKS did not properly calculate Mr. Caldera's and/or other aggrieved employees' regular rates of pay by including all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, any premiums paid for rest period violations were also paid at an incorrect rate and resulted in an underpayment of rest period premium wages.

Accordingly, GLASSWERKS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Caldera 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. GLASSWERKS has not provided Mr. Caldera 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, GLASSWERKS has knowingly and intentionally provided Mr. Caldera and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GLASSWERKS issued uniform wage statements to Mr. Caldera and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the name of the legal entity that is the employer; 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, GLASSWERKS violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because GLASSWERKS did not record the time Mr. Caldera and other aggrieved employees spent working off-the-clock, GLASSWERKS did not list the correct amount of gross wages and net wages earned by Mr. Caldera and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GLASSWERKS failed to accurately list the total number of hours worked by Mr. Caldera 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).

Second, because GLASSWERKS did not calculate Mr. Caldera's and/or other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, GLASSWERKS did not list the correct amount of gross wages earned by Mr. Caldera and/or other aggrieved employees in

compliance with section 226(a)(1) and did not list the correct amount of net wages earned by other aggrieved employees in violation of section 226(a)(5). GLASSWERKS 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 premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, GLASSWERKS issued uniform wage statements to Mr. Caldera and other aggrieved employees that failed to correctly list the name of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. Mr. Caldera's and other aggrieved employees' wage statements incorrectly list the employer as "GLASSWERKS LA," but, according to the California Secretary of State's website, there is no such entity by that name. However, a similarly named entity, "GLASSWERKS LA, INC.," is listed on the California Secretary of State's website with the same address. *See example paystub below.*

Employee Information	Tax Type	Tax Jurisdiction	Status	Exem	Adjs	Other Tax Information
Jose P Caldera ID#: [redacted] SSN: [redacted] Pay Type: [redacted] Base Rate: [redacted] Dept: 1102 Shipping/Receiving	Federal State	CA	[redacted]	[redacted]	[redacted]	[redacted]

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 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), GLASSWERKS willfully failed to maintain accurate payroll records for Mr. Caldera 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.

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, GLASSWERKS failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Caldera and other aggrieved employees, in violation of section 1198. Furthermore, in light of GLASSWERKS’s failure to provide Mr. Caldera and other aggrieved employees with second 30-minute meal periods to which they were entitled, GLASSWERKS kept no records of meal start and end times for second meal periods.

Because GLASSWERKS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Caldera 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, Mr. Caldera 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.

Mr. Caldera 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 §§ 226, 432, and 1198.5 – Failure to Produce and/or Permit Inspection of Records and Instruments Signed

California Labor Code section 226(b) provides that every employer shall furnish current and former employees the right to inspect or copy records pertaining to their employment, upon reasonable request to the employer. Labor Code Section 226(c) provides that an employer must comply with a request made pursuant to Labor Code section 226(b) no later than 21 calendar days from the date of the employee’s request. California Labor Code section 226(f) states “[a] failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer.” California Labor Code section 226(h) states “[a]n employee may also bring an action for injunctive relief to ensure compliance with this section, and is entitled to an award of costs and reasonable attorney’s fees.”

California Labor Code section 432 states “[i]f an employee or applicant signs any instrument relating to the obtaining or holding of employment, he shall be given a copy of the instrument upon request.” California Labor Code section 433 states “[a]ny person violating this article is guilty of a misdemeanor.”

California Labor Code section 1198.5 requires that an employer provide a copy of an employee’s personnel record no later than 30 days from the date the employer receives a written request. If an employer fails to satisfy this written request, the former employee may recover a penalty of \$750.00 from the employer. Cal. Lab. Code § 1198.5(k). The former employee may also bring an action for injunctive relief and may recover costs and reasonable attorney’s fees. Cal. Lab. Code § 1198.5(l).

The applicable IWC Wage Order No. 1-2001, section 7(A), provides “[e]very employer shall keep accurate information with respect to each employee including the following: (1) Full name, home address, occupation and social security number. (2) Birth date, if under 18 years, and designation as

a minor. (3) Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded. (4) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee. (5) Total hours worked in the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request.” IWC Wage Order No. 1-2001, section 7(C), also provides “[a]ll required records shall be in the English language and in ink or other indelible form, properly dated, showing month, day and year, and shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California. An employee’s records shall be available for inspection by the employee upon reasonable request.”

During the relevant time period, Mr. Caldera sent GLASSWERKS reasonable written requests for documents and records relating to his employment with GLASSWERKS. During the relevant time period, GLASSWERKS failed to produce for inspection and copying or otherwise permit inspection and copying of documents and records relating to Mr. Caldera’s employment. For example, on July 28, 2020, Mr. Caldera sent a written request to GLASSWERKS via FedEx overnight mail. On July 29, 2020, FedEx confirmed GLASSWERKS received Mr. Caldera’s written request for records. To date, GLASSWERKS has failed to even respond to Mr. Caldera’s written request for his records. Thus, over 21 days have passed from the date that Mr. Caldera sent GLASSWERKS a reasonable written request for documents and records relating to his employment, and GLASSWERKS has failed to comply with the request in violation of Labor Code section 226(b) and the applicable IWC Wage Order.

Mr. Caldera and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226(f) and (h), 1198.5(k)-(l), 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, GLASSWERKS failed to pay Mr. Caldera and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Caldera 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.

On information and belief, GLASSWERKS has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Caldera was terminated on or about February 25, 2020. However, GLASSWERKS did not provide him with his final paycheck until the final week of March 2020. Thus, GLASSWERKS failed to pay Mr. Caldera his final wages immediately, in violation of Labor Code section 201.

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

Mr. Caldera 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, GLASSWERKS implemented, on a company-wide basis, an employer-imposed requirement that other aggrieved employees undergo mandatory drug testing and/or physical examinations, but required them to do so at their own expense. As stated, GLASSWERKS had a company-wide policy requiring that other aggrieved employees travel to a specified medical facility on their own time and use their own means of transportation to undergo drug testing and/or physical examinations. At all times, GLASSWERKS was in control of scheduling the date and time for the testing and/or examinations, selecting the provider/facility where the testing and/or examinations were to take place, and determining the scope of the testing and/or examinations. However, GLASSWERKS did not compensate other aggrieved employees for the time they spent traveling to and from the medical facilities, for the time they spent undergoing the drug testing and/or physical examinations, or reimburse them for the travel expenses they incurred getting to and from the medical facilities. GLASSWERKS's policy and/or practice of not paying for all costs other aggrieved employees incurred obtaining mandatory drug testing and/or physical examinations 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 § 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, IWC Wage Order 1-2001, 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.”

First, during the relevant time period, GLASSWERKS, on a company-wide basis, mandated that Mr. Caldera and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Mr. Caldera and other aggrieved employees purchased steel-toed boots to wear inside GLASSWERKS's facilities, but were not reimbursed fully for these costs.

Second, GLASSWERKS, on a company-wide basis, required Mr. Caldera and other aggrieved employees to purchase basic office supplies that were necessary for completion of assigned tasks. For example, Mr. Caldera was required to buy pens; throughout his employment, he estimates spending approximately \$40.00 on these expenses. GLASSWERKS failed to provide basic supplies to Mr. Caldera and other aggrieved employees, forcing them to procure their own, and failed to reimburse Mr. Caldera and other aggrieved employees for the costs of these supplies.

Third, during the relevant time period, as stated, GLASSWERKS had a company-wide policy of requiring other aggrieved employees to travel to medical facilities on their own time and using their personal vehicles or alternate transportation to obtain mandatory drug testing and/or physical examinations, but did not reimburse them for their travel expenses, including mileage. At all times, GLASSWERKS 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. GLASSWERKS gave other aggrieved employees strict instructions to obtain drug testing and/or physical examinations, and other aggrieved employees underwent the examinations and/or testing for the sole benefit of GLASSWERKS. Although GLASSWERKS required other aggrieved employees to use their own vehicles or obtain alternate transportation to undergo drug testing and/or physical examinations, GLASSWERKS never reimbursed them for their travel expenses.

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

Thus, GLASSWERKS 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. Mr. Caldera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

GLASSWERKS failed to provide Mr. Caldera and other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

GLASSWERKS's failure to provide Mr. Caldera and other aggrieved employees with written notice of basic information regarding their employment with GLASSWERKS is in violation of Labor Code section 2810.5.

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

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

GLASSWERKS, on a company-wide basis, failed to provide Mr. Caldera and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that GLASSWERKS required employees to wear certain personal protective equipment, including steel-toed boots, GLASSWERKS failed to provide such reasonably necessary equipment to Mr. Caldera and other aggrieved employees to keep them safe.

GLASSWERKS's failure to provide Mr. Caldera and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Caldera and other aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 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.” GLASSWERKS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Caldera’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Mr. Caldera seeks the remedies set forth in Labor Code section 558 for himself, 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, Mr. Caldera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against GLASSWERKS for violations of California Labor Code sections 201, 202, 203, 204, 222.5, 226, 226.7, 432, 510, 512(a), 516, 558(a), 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 1198.5, 2802, 2810.5, 6401, and 6403.

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

Pre-Litigation Demand

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

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

1. GLASSWERKS shall pay Mr. Caldera and all other aggrieved employees employed by GLASSWERKS at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. GLASSWERKS 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 and provided lawful meal and rest periods.
3. GLASSWERKS shall conduct a survey or interview all current and former aggrieved employees in California who worked for GLASSWERKS 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 boot expenses, office supplies, mandatory medical examinations, travel, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. GLASSWERKS 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. GLASSWERKS 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. GLASSWERKS shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for GLASSWERKS's benefit, including, but not limited to, boot expenses, office supplies, mandatory medical examinations, and travel expenses, as required by Labor Code sections 222.5 and 2802.
6. GLASSWERKS shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. GLASSWERKS shall provide Mr. Caldera and all aggrieved employees employed by GLASSWERKS 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. GLASSWERKS shall timely provide Mr. Caldera and those aggrieved employees who request to inspect or copy records pertaining to their employment, with a copy of their personnel record, signed instruments, and documents and records related to their employment, as required by Labor Code sections 226(b), 432, and 1198.5.
9. GLASSWERKS shall provide Mr. Caldera and all aggrieved employees written notice of basic information regarding their employment that includes the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).
10. GLASSWERKS shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
11. GLASSWERKS 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.
12. GLASSWERKS 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, 226.3, 256, 558, 1174.5, 1197.1, 1198.5, 1199, and 2699, and Wage Order No. 1-2001, section 20.

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

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

Best Regards,



Anthony Castillo

Copy: GLASSWERKS LA, INC. (via U.S. Certified Mail)



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:

GLASSWERKS LA, INC.
8600 RHEEM AVE
SOUTH GATE CA 90280



9590 9403 0424 5163 3661 26

2. Article Number (Transfer from service label)

7019 2280 0000 7398 6893

PS Form 3811, April 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

CERTIFIED MAIL



7019 2280 0000 7398 6893

GLASSWERKS LA, INC.
8600 RHEEM AVE
SOUTH GATE CA 90280

Stone
LAW APC

1000
Park East, Ste 1000
S. CA 90067

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail OnlyFor delivery information, visit our website at www.usps.com®.

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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

GLASSWERKS LA, INC.

8600 RHEEM AVE

SOUTH GATE CA 90280

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

See Reverse for Instructions

Postmark
Here

Caldera v.
Glasswerks LA,
Inc.