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Assigned for All Purposes
Judge William Claster
CX-104

*Attorneys for Plaintiff, Class members, and
Aggrieved Employees*

**SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE**

DEVIN GONZALES, on behalf of himself,
Putative Class members, Aggrieved Employees
and the State of California,

Plaintiffs,

vs.

CEDAR FAIR L.P, d/b/a KNOTT'S BERRY
FARM & RESORTS

Defendant.

Case No. 30-2020-01173638-CU-OE-CXC

**CLASS ACTION AND PAGA
COMPLAINT FOR VIOLATIONS OF:**

- (1) Failure to Pay for All Hours Worked (Cal. Lab. Code § 204);
- (2) Failure to Pay Minimum Wage and Liquidated Damages (Labor Code §§, 1182.12, 1194, 1194.2, 1197, and 1197.1);
- (3) Failure to Pay Overtime Wages (Labor Code § 510);
- (4) Waiting Time Penalties (Labor Code §§ 201-203);
- (5) Failure to Provide Timely and Accurate Itemized Wage Statements (Cal. Lab. Code § 226);
- (6) Unlawful Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (7) Private Attorneys General Act (Labor Code § 2699(a));
- (8) Private Attorneys General Act (Labor Code § 2699(f)).

DEMAND FOR JURY TRIAL

1 **INTRODUCTION**

2 1. Plaintiff Devin Gonzales, individually and on behalf of all others similarly situated
3 (“Plaintiff”), brings this class action against Defendant Cedar Fair, L.P d/b/a/ Knott’s Berry Farms
4 (“Defendant” or “Cedar Fair”) on behalf of individuals who have worked for Cedar Fair as non-
5 exempt hourly employees and have been subject to Defendant’s security-check and timekeeping
6 rounding policies and practices (collectively “Putative Class members” and/or “Aggrieved
7 Employees”). Plaintiff also brings this Private Attorney Generals Act (“PAGA”) action on behalf of
8 the State of California and Aggrieved Employees for civil penalties resulting from Defendant’s
9 violations of the California Labor Code as described herein. This case implicates Cedar Fair’s
10 longstanding policies and practices, which fail to properly compensate non-exempt employees for
11 work performed while off-the-clock. Throughout the relevant time period, Plaintiff, putative Class
12 members and Aggrieved Employees have been denied payment for all hours worked, including
13 overtime, have been forced to wait in security-check lines without pay, and Defendant encouraged
14 Putative Class members and Aggrieved Employees to clock in and out for their shifts in such a way
15 that triggers the rounding policy in Cedar Fair’s favor more than not.

16 2. Defendant knowingly and willfully require Plaintiff and those similarly situated to
17 perform work and/or remain on duty while off-the-clock for the benefit of Defendant, which violates
18 California law. Plaintiff brings these claims to challenge Defendant’s policies and practices of: (1)
19 failing to pay Plaintiff, putative Class members and Aggrieved Employees all minimum wages owed;
20 (2) failing to pay Plaintiff, putative Class members and Aggrieved Employees for all hours worked;
21 (3) failing to pay Plaintiff, putative Class members and Aggrieved Employees all overtime wages
22 owed; (4) failing to pay all wages owed upon separation of employment; and (5) failing to provide
23 Plaintiff, putative Class members and Aggrieved Employees with accurate, itemized wage
24 statements.

25 3. Plaintiff files this action to recover all unpaid wages, penalties, and other damages on
26 behalf of himself and putative Class members under California Code of Civil Procedure § 382.
27 Plaintiff seeks to remedy the sweeping practices Defendant has integrated into its time tracking,
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1 payroll, and security check policies at its locations in California that have deprived Plaintiff, putative
2 Class members and Aggrieved Employees of their lawfully earned wages.

3 **JURISDICTION AND VENUE**

4 4. This Court has jurisdiction over Plaintiff's claims pursuant to the California Labor
5 Code and Business and Professions Code. The Court also has jurisdiction over Defendant because
6 Defendant does business in California, is authorized to do business in the State of California and
7 are registered with the California Secretary of State.

8 5. Venue is proper in this judicial district pursuant to Code of Civil Procedure § 393.
9 Defendant conducts business, employs putative Class members, and has jobsites in this County.
10 Plaintiff alleges that events giving rise to these causes of action occurred in this County and some
11 part of these causes of action arose in this County.

12 **PARTIES**

13 6. Plaintiff Devin Gonzales is an individual over the age of eighteen, and at all times
14 relevant to this Complaint was a citizen and resident of the State of California, County of Los
15 Angeles. Plaintiff was employed as a non-exempt employee performing work as a monster character
16 by Defendant at Knott's Berry Farm theme park in Buena Park, California from 2009 to 2019 in the
17 months of September through November in each of those years, respectively.

18 7. As defined herein, the putative Class includes all individuals who are or who have been
19 employed by Defendant as non-exempt, hourly-paid employees in the State of California within the
20 four years preceding the filing of this Complaint.

21 8. As defined herein, the putative monster character Subclass includes all individuals who
22 are or who have been employed by Defendant as non-exempt, hourly-paid employees who worked
23 as a monster character, and other non-exempt workers who performed similar job duties, in the State
24 of California within the four years preceding the filing of this Complaint.

25 9. As defined herein, the Aggrieved Employees include all individuals who are or who
26 have been employed by Defendant as non-exempt, hourly-paid employees in the State of California
27

1 from October 5, 2019 until final resolution of this action.

2 10. Plaintiff is informed, believes, and thereon alleges that Defendant Cedar Fair, Company
3 is a Delaware corporation with its principal place of business located in Sandusky, Ohio, and is
4 registered to do business in California. Cedar Fair may be served with process by serving its
5 registered agent CSC – Lawyers Incorporating Service, 2710 Gateway Oaks Drive, Suite 150N,
6 Sacramento, California 95833.

7 11. Plaintiff is informed, believes, and thereon alleges that Defendant owns, manages, and
8 operates theme parks. Cedar Fair operates Knott’s Berry Farm, which is a theme park located in
9 Buena Park, California, as well as Knott’s Soak City in Buena Park. In addition to Knott’s Berry
10 Farm and Knott’s Soak City, Cedar Fair operates 13 amusement parks around the country.

11 12. As the employer of Plaintiff, putative Class members, and Aggrieved Employees
12 throughout the relevant time periods, Defendant is solely liable for penalties for violations of the
13 California Labor Code, Industrial Welfare Commission (“IWC”) Wage Order 10 and California
14 Business and Professions Code with respect to the employment of Plaintiff, putative Class members
15 and Aggrieved Employees.

16 13. At all material times, Defendant has done business under the laws of California, has
17 had places of business in California, including in this judicial district, and has employed putative
18 Class members in California. Defendant is a “person” as defined in Labor Code § 18 and “employer”
19 as that term is used in the Labor Code and the Industrial Welfare Commission (“IWC”) Wage Orders
20 regulating wages, hours, and working conditions, and the California Business and Professions Code
21 § 17201.

22 **FACTUAL ALLEGATIONS**

23 14. Plaintiff worked at Cedar Fair at Knott’s Berry Farm in Buena Park, California as a
24 non-exempt hourly employee performing services as a monster character, from 2010 to 2019 in the
25 months of September through November in each of those years, respectively. Plaintiff was paid at
26 an hourly rate of \$12.27. On average, Plaintiff was scheduled to work four shifts per week, and eight
27 to nine hours per shift. On average, Plaintiff was scheduled to work 35 hours per week.

1 15. Upon information and belief, putative Class members and Aggrieved Employees have
2 worked more than 8 hours a day and more than 40 hours in a workweek during the four years before
3 this Complaint was filed.

4 16. Putative Class members and Aggrieved Employees were and are employed by
5 Defendant, are paid on an hourly rate basis, and are classified as non-exempt.

6 17. Putative Class members and Aggrieved Employees report to facilities owned, operated,
7 or managed by Defendant to perform their jobs.

8 18. Putative Class members and Aggrieved Employees perform their jobs under
9 Defendant's supervision and using materials and technology approved and supplied by Defendant.

10 19. Putative Class members and Aggrieved Employees are required to follow and abide by
11 Defendant's common work, time, pay, and overtime policies and procedures in the performance of
12 their jobs, including the security check requirement and Defendant's timekeeping rounding
13 policies/practices.

14 20. At the end of each pay period, putative Class members and Aggrieved Employees
15 receive wages from Defendant that are determined by common systems and methods that Cedar Fair
16 selects and controls.

17 21. Defendant pays putative Class members and Aggrieved Employees on an hourly basis.

18 22. As a matter of course, Cedar Fair denies Mr. Gonzalez, putative Class members and
19 the Aggrieved Employees proper compensation for all hours worked. Further, Mr. Gonzalez, putative
20 Class members and the Aggrieved Employees are not paid for all work after eight hours in a shift,
21 even though they regularly work at or in excess of eight hours per shift. Indeed, Cedar Fair institutes
22 a universal timekeeping policy and practice applicable to all non-exempt workers in which putative
23 Class members' and Aggrieved Employees' recorded time is rounded to the nearest 15-minute
24 increment, as opposed to basing putative Class members' and Aggrieved Employees' pay on the
25 actual time worked. In implementing this "rounding policy," Cedar Fair has a systematic and
26 widespread practice of instructing or otherwise encouraging putative Class members and Aggrieved
27 Employees to clock in and out for their shifts in such a way that triggers the rounding policy in Cedar
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1 Fair's favor more often than not. In other words, Cedar Fair institutes a non-neutral rounding policy
2 in the employer's favor and to the detriment of the Aggrieved Employees and putative Class
3 members. As a result of this rounding policy and practice, Mr. Gonzalez, putative Class members
4 and Aggrieved Employees lose several minutes per day at the beginning and end of their shifts that
5 are rounded down in Cedar Fair's favor that would otherwise be compensable.

6 23. Additionally, Defendant routinely requires that Plaintiff, putative Class members, and
7 Aggrieved Employees to wait in security-check lines at the beginning and end of their shifts while
8 they are off-the-clock and without pay. Plaintiff, putative Class members, and Aggrieved Employees
9 are required to wait in security check lines on average five to ten minutes at a time, and sometimes
10 even longer. This time spent waiting in the security check lines is compensable because it is time
11 spent subject to the control of Defendant, but nevertheless goes unpaid.

12 24. Plaintiff is informed, believes, and thereon alleges that this same security-check system
13 is used across all Defendant's facilities in California.

14 25. Plaintiff is informed, believes, and thereon alleges that Defendant utilizes the same or
15 substantially similar rounding policy throughout all of its locations in California.

16 26. As a result of these policies and practices, Defendant denies Plaintiff, putative Class
17 members, and Aggrieved Employees compensation to which they are lawfully owed, including
18 minimum wages and overtime wages resulting from off-the-clock, pre- and post-shift work.

19 27. Defendant also routinely fails to maintain true and accurate records of the hours worked
20 by Plaintiff, putative Class members, and Aggrieved Employees. In particular, Defendant has failed
21 to record hours that Plaintiff, putative Class members, and Aggrieved Employees worked off-the-
22 clock, including time spent in security check lines and instituting a non-neutral timekeeping rounding
23 policy in the employer's favor. As a result, the wage statements that Defendant provides to Plaintiff,
24 putative Class members, and Aggrieved Employees are not accurate because they do not accurately
25 reflect the total hours worked and net wages earned.

26 28. Further, Defendant has failed to provide those putative Class members and Aggrieved
27 Employees, including Plaintiff, who have separated from their employment with Defendant, with all
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1 wages owed at the end of employment. As these workers have not received compensation for off-
2 the-clock work and the resulting overtime work, and these amounts have remained unpaid even upon
3 employees' separation from employment due to Defendant's common policies and practices,
4 Defendant has failed to pay all wages due upon separation. As a consequence, Defendant owes
5 waiting time penalties.

6 29. On information and belief, Defendant employs, or employed, hundreds of people
7 similarly situated to Plaintiff during the four-year period prior to the filing of this Complaint.

8 30. As a result of Defendant's policies and practices with respect to rounding polices and
9 security check requirements as alleged above, Defendant failed to accurately record all hours worked
10 and thus failed to pay putative Class Members and Aggrieved Employees for all hours worked. The
11 requirement to pay employees at least the minimum wage for all time spent subject to the control of
12 their employer is and has been well-established at all relevant times alleged herein. As a result,
13 Defendant's method of paying Plaintiff and putative Class members and Aggrieved Employees was
14 willful and was not based on a good faith and reasonable belief that their conduct complied with
15 California law.

16 31. As an employer in California, Defendant is obligated to be informed of and to follow
17 California law. Defendant's conduct is willful, is carried out in bad faith, and causes significant
18 damages to non-exempt hourly employees in an amount to be determined at trial.

19 **CCP § 382 CLASS ACTION ALLEGATIONS**

20 32. Plaintiff brings the causes of action alleged in this Complaint as a class action on behalf
21 of himself and all others similarly situated pursuant to California Code of Civil Procedure § 382. The
22 putative Class that Plaintiff seeks to represent is defined as follows:

23 **Class Members:**

24 **All current and former hourly, non-exempt workers employed**
25 **by Defendant at any of Defendant's facilities located in**
26 **California at any time starting four years prior to the filing of**
27 **this Complaint until resolution of this action.**

Monster Characters Subclass:

All current and former hourly, non-exempt workers employed by Defendant to perform work as monster characters, and any other similar job duties, at any of Defendant's facilities located in California at any time starting four years prior to the filing of this Complaint until resolution of this action.

33. This action has been brought and may properly be maintained as a class action because there is a well-defined community of interest in the litigation and the proposed putative Class is easily ascertainable.

34. Numerosity: The potential members of the class are so numerous that joinder of all the members of the putative Class is impracticable. Plaintiff is informed and believes that the number of putative Class members is in the hundreds. This volume makes bringing the claims of each individual member of the putative Class before this Court impracticable. Likewise, joining each individual member of the putative Class as a plaintiff in this action is impracticable. Furthermore, the identities of the putative Class will be determined from Defendant's records, as will the compensation paid to each of them. As such, a class action is a reasonable and practical means of resolving these claims. To require individual actions would prejudice the putative Class and Defendant.

35. Commonality: There are questions of law and fact common to Plaintiff and the putative Class that predominate over any questions affecting only individual members of the putative Class. These common questions of law and fact include, but are not limited to:

- a. Whether Defendant fails to compensate putative Class members for all hours worked, including as minimum wage and overtime compensation, in violation of the Labor Code and IWC Wage Order 10;
- b. Whether Defendant has a policy and/or practice of requiring putative Class members to be in the control of, spend time primarily for the benefit of, and work for Defendant off-the-clock and without compensation;
- c. Whether Defendant fails to properly pay overtime compensation, at either one and one-half times or double the regular rate of pay, to putative Class members in violation of the Labor Code and Wage Order 10;

- 1 d. Whether Defendant fails to provide putative Class members with timely, accurate
2 itemized wage statements in violation of the Labor Code and Wage Order 10;
3 e. Whether Defendant fails to timely pay putative Class members for all wages owed
4 upon termination of employment in violation of the Labor Code;
5 f. Whether Defendant violates Business and Professions Code §§ 17200 et seq., by:
6 (a) failing to compensate putative Class members for all hours worked,
7 including at minimum wage and as overtime compensation;
8 (b) failing to pay putative Class members minimum wage for all hours worked;
9 and
10 (c) failing to properly pay overtime compensation, at either one and one-half
11 times or double the regular rate of pay, to putative Class members;
12 (d) failing to provide putative Class members with timely, accurate itemized
13 wage statements;
14 (e) failing to timely pay putative Class members for all wages owed upon
15 termination of employment; and
16 g. The proper formula for calculating restitution, damages and penalties owed to
17 Plaintiff and the putative Class as alleged herein.

18 36. Typicality: Plaintiff's claims are typical of the claims of the putative Class.
19 Defendant's common course of conduct in violation of law as alleged herein caused Plaintiff and
20 putative Class members to sustain the same or similar injuries and damages. Plaintiff's claims are
21 thereby representative of and co-extensive with the claims of the putative Class.

22 37. Adequacy of Representation: Plaintiff seeks relief for state law violations perpetrated
23 by Defendant. In that sense, Plaintiff does not have any conflicts of interest with other putative Class
24 members and will prosecute the case vigorously on behalf of the putative Class. Counsel representing
25 Plaintiff is competent and experienced in litigating complex cases and large class actions, including
26 wage and hour cases. Plaintiff will fairly and adequately represent and protect the interests of the
27 putative Class members.
28

1 38. Superiority of Class Action: A class action is superior to other available means for the
2 fair and efficient adjudication of this controversy. Individual joinder of all proposed putative Class
3 members is not practicable, and questions of law and fact common to the putative Class predominate
4 over any questions affecting only individual members of the putative Class. Each proposed putative
5 Class member has been damaged and is entitled to recovery by reason of Defendant's illegal policies
6 and/or practices. Class action treatment will allow those similarly situated persons to litigate their
7 claims in the manner that is most efficient and economical for the parties and the judicial system.

8 39. In the alternative, the putative Class may be certified because the prosecution of
9 separate actions by the individual members of the putative Class would create a risk of inconsistent
10 or varying adjudication with respect to individual members of the putative Class which would
11 establish incompatible standards of conduct for Defendant.

12 40. If each individual putative Class member were required to file an individual lawsuit,
13 Defendant would necessarily gain an unconscionable advantage because Defendant would be able to
14 exploit and overwhelm the limited resources of each member of the putative Class with Defendant's
15 vastly superior financial legal resources.

16 41. Requiring each individual putative Class member to pursue an individual remedy
17 would also discourage the assertion of lawful claims by the putative Class members who would be
18 disinclined to pursue these claims against Defendant because of an appreciable and justifiable fear
19 of retaliation and permanent damage to their lives, careers and well-being.

20 **FIRST CAUSE OF ACTION**
21 **Failure to Pay for All Hours Worked Pursuant to the California Labor Code § 204**
22 **(On Behalf of Plaintiff and Putative Class Members)**

23 42. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
24 herein.

25 43. Defendant willfully engaged in and continue to engage in a policy and practice of not
26 compensating Plaintiff and putative Class members for all hours worked or spent in their control.

27 44. Defendant regularly schedules Plaintiff and the putative Class members to work shifts
28 of eight to nine hours. However, Defendant intentionally and willfully require Plaintiff and putative

1 Class members to complete additional work off-the-clock. For example, for every shift worked,
2 Plaintiff and putative Class members are required to first clock out and then wait in security-check
3 lines for an average of five to ten minutes before leaving the premises. They must also spend time
4 waiting in the security-check line before their shift, before they have clocked in. Plaintiff and putative
5 Class members are not compensated for this work. As a result, Defendant fails to pay Plaintiff and
6 the putative Class members for all hours worked and fail to accurately track all of their actual hours
7 worked.

8 45. By way of further example, for every shift worked, Defendant encouraged Plaintiff and
9 putative Class members to clock in and out for their shifts in such a way that triggers the rounding
10 policy in Cedar Fair favor more than not. As a result, Defendant fails to pay Plaintiff and the putative
11 Class members for all hours worked and fail to accurately track all of their actual hours worked.

12 46. Labor Code § 204 provides in part that “all wages, ..., earned by any person in any
13 employment are due and payable twice during each calendar month, on days designated in advance
14 by the employer as the regular paydays.”

15 47. Labor Code §1194(a) provides as follows:

16 Notwithstanding any agreement to work for a lesser wage, any
17 employee receiving less than the legal minimum wage or the legal
18 overtime compensation applicable to the employee is entitled to
19 recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest
thereon, reasonable attorneys’ fees, and costs of suit.

20 48. Labor Code § 200(a) defines wages as “all amounts for labor performed by employees
21 of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
22 commission basis, or other method of calculation.”

23 49. Labor Code § 1198 makes it unlawful for employers to employ employees under
24 conditions that violate the applicable Wage Order.

25 50. IWC Wage Order 10-2001(2)(H) defines hours worked as “the time during which an
26 employee is subject to the control of an employer, and includes all the time the employee is suffered
27 or permitted to work, whether or not required to do so.”

51. Defendant requires Plaintiff and the putative Class to work off-the-clock without compensation. In other words, Plaintiff and the putative Class are forced to perform work for the benefit of Defendant without compensation.

52. In violation of California law, Defendant knowingly and willfully refuses to perform its obligations to provide Plaintiff and the putative Class with compensation for all time worked. Defendant regularly fails to track all of the time Plaintiff and the putative Class actually work. As a result, Defendant regularly fails to compensate Plaintiff and the putative Class for all hours worked. Therefore, Defendant committed, and continues to commit, the acts alleged herein knowingly and willfully, and in conscious disregard of the Plaintiff and the putative Class members' rights. Plaintiff and the putative Class are thus entitled to recover actual and compensatory damages, plus interest, attorneys' fees, expenses, and costs of suit.

53. As a proximate result of the aforementioned violations, Plaintiff and the putative Class have been damaged in an amount according to proof at time of trial.

54. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

SECOND CAUSE OF ACTION
Failure to Pay Minimum Wages
Pursuant to Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1197.1
and IWC Wage Order No. 10-2001(4)
(On Behalf of Plaintiff and Putative Class Members)

55. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

56. During the applicable statutory period, California Labor Code §§ 1182.12 and 1197, and the IWC Wage Order 10-2001(4) were in full force and effect and required that Defendant's hourly employees receive the minimum wage for all hours worked at the rate of ten dollars and fifty cents (\$10.00) per hour commencing January 1, 2016, ten dollars and fifty cents (\$10.50) per hour commencing January 1, 2017, eleven dollars (\$11.00) per hour commencing on January 1, 2018, twelve dollars (\$12.00) per hour commencing on January 1, 2019, and thirteen dollars (\$13.00) per hour commencing January 1, 2020.

57. Defendant maintains, and has maintained, policies and procedures which create a working environment where hourly employees in the putative Class are routinely not compensated for time worked for at least the statutory minimum wage. Plaintiff and putative Class members frequently work time off-the-clock during time spent in security check lines and as a result of unfavorable rounding policies, which is time worked that is uncompensated.

58. As a direct and proximate result of the unlawful acts and/or omissions of Defendant, Plaintiff and putative Class members have been deprived of minimum wages in an amount to be determined at trial, and are entitled to a recovery of such amount, plus liquidated damages, plus interest thereon, attorney's fees, costs of suit pursuant to Labor Code §§ 1194, 1194.2, and 1197.1.

59. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

THIRD CAUSE OF ACTION
Failure to Pay Overtime Wages Pursuant to Labor Code § 510 and
IWC Wage Order No. 10-2001(3)(A)
(On Behalf of Plaintiff and Putative Class Members)

60. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

61. Defendant does not compensate Plaintiff and putative Class members for overtime hours worked at the appropriate overtime rate of time and a half, as required by California law.

62. Labor Code § 510 provides as follows:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

63. The IWC Wage Order 10-2001(3)(A)(1) states:

The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than

1 40 hours in any workweek unless the employee receives one and
2 one-half (1 ½) times such employee's regular rate of pay for all
3 hours worked over 40 hours in the workweek. Eight (8) hours of
4 labor constitutes a day's work. Employment beyond eight (8) hours
5 in any workday or more than six (6) days in any workweek is
6 permissible provided the employee is compensated for such
7 overtime at not less than: . . . One and one-half (1 ½) times the
8 employee's regular rate of pay for all hours worked in excess of
9 eight (8) hours up to and including 12 hours in any workday, and for
10 the first eight (8) hours worked on the seventh (7th) consecutive day
11 of work in a workweek; and ... [d]ouble the employee's regular rate
12 of pay for all hours worked in excess of 12 hours in any workday
13 and for all hours worked in excess of eight (8) hours on the seventh
14 (7th) consecutive day of work in a workweek.

15 64. Labor Code § 1194(a) provides as follows:

16 Notwithstanding any agreement to work for a lesser wage, any
17 employee receiving less than the legal minimum wage or the legal
18 overtime compensation applicable to the employee is entitled to
19 recover in a civil action the unpaid balance of the full amount of this
20 minimum wage or overtime compensation, including interest
21 thereon, reasonable attorneys' fees, and costs of suit.

22 65. Labor Code § 200 defines wages as "all amounts for labor performed by employees of
23 every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
24 commission basis or other method of calculation." All such wages are subject to California's
25 overtime requirements, including those set forth above.

26 66. Defendant regularly requires putative Class members to work in excess of eight hours
27 per day and/or forty hours per week, but does not compensate them at the overtime rate for this work.
28 By virtue of Defendant's failure to track, record and compensate putative Class Members for their
time spent waiting in security check lines and the Defendant's unfavorable rounding policies, putative
Class Members worked overtime without pay.

67. Plaintiff and putative Class members have worked overtime hours for Defendant
without being paid overtime premiums in violation of the Labor Code, the applicable IWC Wage
Order, and other applicable law.

68. Defendant has knowingly and willfully refused to perform its obligations to
compensate Plaintiff and the putative Class members for all premium wages for overtime work,
including the off-the-clock work described herein. As a proximate result of the aforementioned

1 violations, Defendant has damaged Plaintiff and the putative Class members in amounts to be
2 determined according to proof at time of trial.

3 69. Defendant is liable to Plaintiff and the putative Class alleged herein for the unpaid
4 overtime and civil penalties, with interest thereon. Furthermore, Plaintiff is entitled to an award of
5 attorneys' fees and costs as set forth below.

6 70. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

7 **FOURTH CAUSE OF ACTION**
8 **Failure to Provide Accurate Itemized Wage Statements Pursuant to Labor Code § 226 and**
9 **IWC Wage Order No. 10-2001(7)**
10 **(On Behalf of Plaintiff and Putative Class Members)**

11 71. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
12 herein.

13 72. Defendant does not provide Plaintiff and putative Class members with accurate
14 itemized wage statements as required by California law.

15 73. Labor Code § 226(a) provides:

16 An employer, semimonthly or at the time of each payment of wages,
17 shall furnish to his or her employees, either as a detachable part of
18 the check, draft, or voucher paying the employee's wages, or
19 separately if wages are paid by personal check or cash, an accurate
20 itemized statement in writing showing: (1) gross wages earned, (2)
21 total hours worked by the employee, except as provided in
22 subdivision (j), (3) the number of piece-rate units earned and any
23 applicable piece rate if the employee is paid on a piece-rate basis,
24 (4) all deductions, provided that all deductions made on written
25 orders of the employee may be aggregated and shown as one item,
26 (5) net wages earned, (6) the inclusive dates of the period for which
27 the employee is paid, (7) the name of the employee and only the last
28 four digits of his or her social security number, (8) the name and
address of the legal entity that is the employer and, if the employer
is a farm labor contractor, as defined in subdivision (b) of Section
1682, the name and address of the legal entity that secured the
services of the employer, and (9) all applicable hourly rates in effect
during the pay period and the corresponding number of hours
worked at each hourly rate by the employee The deductions
made from payments of wages shall be recorded in ink or other
indelible form, properly dated, showing the month, day, and year,
and a copy of the statement or a record of the deductions shall be
kept on file by the employer for at least three years at the place of
employment or at a central location within the State of California.

74. IWC Wage Order 10-2001(7)(B) provides:

1 Every employer shall semimonthly or at the time of each payment
2 of wages furnish each employee, either as a detachable part of the
3 check, draft, or voucher paying the employees wages, or separately,
4 an itemized statement in writing showing: (1) all deductions; (2) the
5 inclusive dates of the period for which the employee is paid; (3) the
6 name of the employee or the employees social security number; and
7 (4) the name of the employer, provided all deductions made on
8 written orders of the employee may be aggregated and shown as one
9 item.

6 75. Labor Code § 226(e) provides:

7 An employee suffering injury as a result of a knowing and
8 intentional failure by an employer to comply with subdivision (a) is
9 entitled to recover the greater of all actual damages or fifty dollars
10 (\$50) for the initial pay period in which a violation occurs and one
11 hundred dollars (\$100) per employee for each violation in a
12 subsequent pay period, not exceeding an aggregate penalty of four
13 thousand dollars (\$4,000), and is entitled to an award of costs and
14 reasonable attorney's fees.

11 76. Plaintiff seeks to recover actual damages, costs and attorneys' fees under this section.

12 77. Defendant does not provide timely, accurate itemized wage statements to Plaintiff and
13 putative Class members in accordance with Labor Code § 226(a) and IWC Wage Order 10(7). The
14 wage statements Defendant provides to its employees, including Plaintiff and putative Class
15 members, do not accurately reflect all of the actual hours worked, actual gross wages earned, or
16 actual net wages earned by virtue of the preceding violations alleged herein.

17 78. Defendant is liable to Plaintiff and the putative Class alleged herein for the amounts
18 described above in addition to the civil penalties set forth below, with interest thereon. Furthermore,
19 Plaintiff is entitled to an award of attorneys' fees and costs as set forth below, pursuant to Labor
20 Code § 226(e).

21 79. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

22 **FIFTH CAUSE OF ACTION**
23 **Waiting Time Penalties Pursuant to Labor Code §§ 201-203**
24 **(On Behalf of Plaintiff and Putative Class Members)**

24 80. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
25 herein.

26 81. Defendant has not and continues to fail to provide putative Class members with all of
27 their wages due after their employment with Defendant ends, as required under California law.

- 1 82. Labor Code § 201 provides:
2 If an employer discharges an employee, the wages earned and
3 unpaid at the time of discharge are due and payable immediately.
- 4 83. Labor Code § 202 provides:
5 If an employee not having a written contract for a definite period
6 quits his or her employment, his or her wages shall become due and
7 payable not later than 72 hours thereafter, unless the employee has
8 given 72 hours previous notice of his or her intention to quit, in
9 which case the employee is entitled to his or her wages at the time
10 of quitting.
- 11 84. Labor Code § 203 provides, in relevant part:
12 If an employer willfully fails to pay, without abatement or reduction,
13 in accordance with Sections 201, 201.5, 202, and 205.5, any wages
14 of an employee who is discharged or who quits, the wages of the
15 employee shall continue as a penalty from the due date thereof at the
16 same rate until paid or until an action therefor is commenced; but
17 the wages shall not continue for more than 30 days.
- 18 85. Plaintiff and some of the putative Class members left their employment with Defendant
19 during the statutory period, at which time Defendant owed them unpaid wages as a result of the
20 preceding violations of California law's requirement that all hours worked be paid at the appropriate
21 rate, as alleged herein. These earned, but unpaid, wages derive from time spent working for the
22 benefit of Defendant, which went unrecorded and/or uncompensated.
- 23 86. Defendant willfully refused and continues to refuse to pay putative Class members all
24 the wages that are due and owing to them upon the end of their employment, in the form of
25 uncompensated off-the-clock time as a result of Defendant's willful failure to provide Plaintiff and
26 the putative Class members with payment for all hours worked. As a result of Defendant's actions,
27 Plaintiff and putative Class members have suffered and continue to suffer substantial losses,
28 including lost earnings, and interest.
87. Defendant's willful failure to pay Plaintiff and putative Class members the wages due
 and owing them constitutes a violation of Labor Code §§ 201-202. As a result, Defendant is liable to
 Plaintiff and proposed putative Class members for all penalties owing pursuant to Labor Code §§
 201-203.

88. In addition, Labor Code § 203 provides that an employee's wages will continue as a penalty up to thirty days from the time the wages were due. Therefore, the Plaintiff and putative Class members are entitled to penalties pursuant to Labor Code § 203, plus interest.

89. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

SIXTH CAUSE OF ACTION
Violation of California Business and Professions Code §§ 17200 *et seq.*
(On Behalf of Plaintiff and Putative Class Members)

90. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

91. California Business and Professions Code § 17200 *et seq.*, prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business acts or practices.

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

93. Beginning at an exact date unknown to Plaintiff, but at least since the date four years prior to the filing of this suit, Defendant has committed acts of unfair competition as defined by the UCL, by engaging in the unlawful, unfair, and fraudulent business acts and practices described in this Complaint, including, but not limited to:

- a. violations of Labor Code § 1194 and IWC Wage Order 10-2001(3) and (4) pertaining to payment of wages;
- b. violations of Labor Code §§ 1182.12, 1194, 1194.2, 1197, and 1197.1 and IWC Wage Order No. 10-2001(4) pertaining to minimum wage;
- c. violations of Labor Code § 510 and IWC Wage Order 10-2001(3) pertaining to overtime;
- d. violations of Labor Code § 226 and Wage Order No. 10-2001(7) regarding accurate, timely itemized wage statements; and

1 e. violations of Labor Code §§ 201-203 pertaining to waiting time penalties.

2 94. The violations of these laws and regulations, as well as of the fundamental California
3 public policies protecting wages, serve as unlawful predicate acts and practices for purposes of
4 Business and Professions Code §§ 17200 *et seq.*

5 95. The acts and practices described above constitute unfair, unlawful and fraudulent
6 business practices, and unfair competition, within the meaning of Business and Professions Code §§
7 17200 *et seq.* Among other things, the acts and practices have taken from Plaintiff and the putative
8 Class wages rightfully earned by them, while enabling Defendant to gain an unfair competitive
9 advantage over law-abiding employers and competitors.

10 96. Business and Professions Code § 17203 provides that a court may make such orders or
11 judgments as may be necessary to prevent the use or employment by any person of any practice
12 which constitutes unfair competition. Injunctive relief is necessary and appropriate to prevent
13 Defendant from repeating the unlawful, unfair, and fraudulent business acts and practices alleged
14 above.

15 97. As a direct and proximate result of the aforementioned acts and practices, Plaintiff and
16 the putative Class members have suffered a loss of money and property, in the form of unpaid wages
17 which are due and payable to them.

18 98. Business and Professions Code § 17203 provides that the Court may restore to any
19 person in interest any money or property which may have been acquired by means of such unfair
20 competition. Plaintiff and the putative Class are entitled to restitution pursuant to Business and
21 Professions Code § 17203 for all wages and payments unlawfully withheld from employees during
22 the four-year period prior to the filing of this Complaint. Plaintiff's success in this action will enforce
23 important rights affecting the public interest and, in that regard, Plaintiff sues on behalf of himself
24 as well as others similarly situated. Plaintiff and putative Class members seek and are entitled to
25 unpaid wages, declaratory and injunctive relief, and all other equitable remedies owing to them.

26 99. Plaintiff herein takes upon himself enforcement of these laws and lawful claims. There
27 is a financial burden involved in pursuing this action, the action is seeking to vindicate a public right,
28

1 and it would be against the interests of justice to penalize Plaintiff by forcing him to pay attorneys'
2 fees from the recovery in this action. Attorneys' fees are appropriate pursuant to Code of Civil
3 Procedure §1021.5 and as otherwise provided by law.

4 100. Wherefore, Plaintiff and the putative Class request relief as hereinafter provided.

5 **SEVENTH CAUSE OF ACTION**
6 **Penalties Pursuant to Labor Code § 2699(a)**
7 **(On behalf of the State of California and Aggrieved Employees)**

8 101. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth
9 herein.

10 102. Labor Code § 2699(a) provides:

11 Notwithstanding any other provision of law, any provision of this
12 code that provides for a civil penalty to be assessed and collected by
13 the Labor and Workforce Development Agency or any of its
14 departments, divisions, commissions, boards, agencies or
15 employees, for a violation of this code, may, as an alternative, be
16 recovered through a civil action brought by an aggrieved employee
17 on behalf of himself or herself and other current or former
18 employees.

19 103. Labor Code § 510 provides as follows:

20 Eight hours of labor constitutes a day's work. Any work in excess
21 of eight hours in one workday and any work in excess of 40 hours
22 in any one workweek and the first eight hours worked on the seventh
23 day of work in any one workweek shall be compensated at the rate
24 of no less than one and one-half times the regular rate of pay for an
25 employee. Any work in excess of 12 hours in one day shall be
26 compensated at the rate of no less than twice the regular rate of pay
27 for an employee. In addition, any work in excess of eight hours on
28 any seventh day of a workweek shall be compensated at the rate of
no less than twice the regular rate of pay of an employee.

104. Labor Code § 1194(a) provides as follows:

Notwithstanding any agreement to work for a lesser wage, any
employee receiving less than the legal minimum wage or the legal
overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of this
minimum wage or overtime compensation, including interest
thereon, reasonable attorneys' fees, and costs of suit.

105. Labor Code § 226(a) provides:

Every employer shall, semimonthly or at the time of each payment
of wages, furnish each of his or her employees, either as a detachable
part of the check, draft, or voucher paying the employee's wages, or

1 separately when wages are paid by personal check or cash, an
2 accurate itemized statement in writing showing (1) gross wages
3 earned, (2) total hours worked by the employee, except for any
4 employee whose compensation is solely based on a salary and who
5 is exempt from payment of overtime under subdivision (a) of
6 Section 515 or any applicable order of the Industrial Welfare
7 Commission, (3) the number of piece-rate units earned and any
8 applicable piece rate if the employee is paid on a piece-rate basis,
9 (4) all deductions, provided that all deductions made on written
10 orders of the employee may be aggregated and shown as one item,
11 (5) net wages earned, (6) the inclusive dates of the period for which
12 the employee is paid, (7) the name of the employee and his or her
13 social security number, (8) the name and address of the legal entity
14 that is the employer, and (9) all applicable hourly rates in effect
15 during the pay period and the corresponding number of hours
16 worked at each hourly rate by the employee.

106. Labor Code § 226.3 provides:

10 Any employer who violates subdivision (a) of Section 226 shall be
11 subject to a civil penalty in the amount of two hundred fifty dollars
12 (\$250) per employee per violation in an initial citation and one
13 thousand dollars (\$1,000) per employee for each violation in a
14 subsequent citation, for which the employer fails to provide the
15 employee a wage deduction statement or fails to keep the records
16 required in subdivision (a) of Section 226. The civil penalties
provided for in this section are in addition to any other penalty
provided by law. In enforcing this section, the Labor Commissioner
shall take into consideration whether the violation was inadvertent,
and in his or her discretion, may decide not to penalize an employer
for a first violation when that violation was due to a clerical error or
inadvertent mistake.

107. Labor Code § 200(a) defines wages as “all amounts for labor performed by employees
of every description, whether the amount is fixed or ascertained by the standard of time, task, piece,
commission basis, or other method of calculation.

108. Labor Code § 203(a) provides as follows:

21 If an employer willfully fails to pay, without abatement or reduction,
22 in accordance with Sections 201, 201.3, 201.5, 201.6, 201.8, 201.9,
23 202, and 205.5, any wages of an employee who is discharged or who
24 quits, the wages of the employee shall continue as a penalty from
25 the due date thereof at the same rate until paid or until an action
26 therefor is commenced; but the wages shall not continue for more
27 than 30 days. An employee who sequesters or absents themselves to
28 avoid payment to them, or who refuses to receive the payment when
fully tendered to them, including any penalty then accrued under this
section, is not entitled to any benefit under this section for the time
during which the employee so avoids payment.

1 109. IWC Wage Order 10-2001(2)(H) defines hours worked as “the time during which an
2 employee is subject to the control of an employer, and includes all the time the employee is suffered
3 or permitted to work, whether or not required to do so.”

4 110. Defendant requires Plaintiff and Aggrieved Employees to work off-the-clock without
5 compensation during time spent in security check lines. In other words, Plaintiff and Aggrieved
6 Employees are forced to perform work for the benefit of Defendant without compensation.

7 111. In violation of California law, including Labor Code §§ 510, and 1194, Defendant
8 knowingly and willfully refuses to perform its obligations to provide Plaintiff and Aggrieved
9 Employees with compensation for all time worked. Defendant regularly fails to track all of the time
10 Plaintiff and Aggrieved Employees actually work or to compensate them for all hours worked.

11 112. In violation of Labor Code §§ 510, and 1194, Defendant regularly requires putative
12 Class members to work in excess of eight hours per day and/or thirty-five hours per week, but does
13 not compensate them at the overtime rate for this work. By virtue of Defendant’s failure to track,
14 record and compensate Aggrieved Employees for their time spent waiting in security check lines and
15 the unfavorable rounding policies, Aggrieved Employees worked overtime without pay.

16 113. Defendant committed, and continues to commit, the acts alleged herein in conscious
17 disregard of the Plaintiff and the Aggrieved Employees’ rights. Plaintiff and Aggrieved Employees
18 are thus entitled to recover penalties, attorneys’ fees, and costs of suit.

19 114. Defendant has maintained policies and procedures which create a working environment
20 where hourly employees are routinely compensated at a rate that is less than the statutory minimum
21 wage. Plaintiff and Aggrieved Employees frequently work time off-the-clock and for which they are
22 uncompensated during time spent in security check lines and as a result of Defendant’s rounding
23 policies and practices.

24 115. Plaintiff, on behalf of the State of California, seeks civil penalties pursuant to Labor
25 Code § 2699(a) for each failure by Defendant, as alleged above, to timely pay all wages owed to
26 Plaintiff and Aggrieved Employees in compliance with Labor Code §§ 201-202.
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1 116. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
2 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an accurate, itemized wage
3 statement in compliance with Labor Code § 226(a). The wage statements Defendant provides to its
4 employees, including Plaintiff and Aggrieved Employees, does not accurately reflect all of the actual
5 hours worked, actual gross wages earned, or actual net wages earned by virtue of the preceding
6 violations alleged herein.

7 117. Plaintiff also seeks civil penalties pursuant to Labor Code § 2699(a) for each failure by
8 Defendant, alleged above, to provide Plaintiff and Aggrieved Employees an all wages owed in
9 accordance with Labor Code §§ 1194 and 510.

10 118. Plaintiff also seeks civil penalties pursuant to §§ 225.5, 226.3, and 256 of the California
11 Labor Code.

12 119. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff provided the Labor and
13 Workforce Development Agency (“LWDA”) with notice of his intention to file this claim on
14 September 24, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff
15 satisfied the administrative prerequisites to commence this civil action in compliance with §
16 2699.3(a).

17 120. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved
18 Employees, and himself as set forth in Labor Code § 2699(g)(i).

19 121. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for
20 the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees
21 and costs as set forth below.

22 122. Wherefore, the State of California, Plaintiff, and Aggrieved Employees request relief
23 as hereinafter provided.

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EIGHTH CAUSE OF ACTION
Penalties Pursuant to Labor Code § 2699(f)
(On behalf of the State of California and Aggrieved Employees)

123. Plaintiff re-alleges and incorporates the foregoing paragraphs as though fully set forth herein.

124. Labor Code § 2699(f) provides:

For all provisions of this code except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions, as follows: . . . (2) If, at the time of the alleged violation, the person employs one or more employees, the civil penalty is one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

125. Labor Code § 204 provides in part that “all wages, ..., earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”

126. To the extent than any violation alleged herein does not carry penalties under Labor Code § 2699(a), Plaintiff seeks civil penalties pursuant to Labor Code § 2699(f) for Plaintiff and Aggrieved Employees for each pay period in which he or she was aggrieved, in the amounts established by Labor Code § 2699(f) and other underlying Labor Code violations, including but not limited to violations of Labor Code § 204.

127. Pursuant to Labor Code § 2699.3(a)(1) and (2), Plaintiff has provided the LWDA with notice of his intention to file this claim on September 24, 2020. Sixty-five calendar days have passed without notice from the LWDA. Plaintiff satisfied the administrative prerequisites to commence this civil action in compliance with § 2699.3(a).

128. Plaintiff seeks the aforementioned penalties on behalf of the State, other Aggrieved Employees, and themselves as set forth in Labor Code § 2699(g)(i).

129. Defendant is liable to Plaintiff, Aggrieved Employees, and the State of California for the civil penalties set forth in this Complaint. Plaintiff is also entitled to an award of attorneys’ fees and costs as set forth below.

130. Wherefore, the State of California and Aggrieved Employees request relief as hereinafter provided.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of putative Class members, and the Aggrieved Employees, requests the following relief:

1. For an order certifying the Causes of Action herein described as a class action pursuant to California Code of Civil Procedure § 382;
2. Damages and restitution according to proof at trial for all unpaid wages and other injuries, as provided by the California Labor Code and California Business and Professions Code;
3. For a declaratory judgment that Defendant violated the California Labor Code, California law, and public policy as alleged herein;
4. For a declaratory judgment that Defendant violated California Business and Professions Code §§ 17200 *et seq.* as a result of the aforementioned violations of the California Labor Code;
5. For preliminary, permanent, and mandatory injunctive relief prohibiting Defendant, its officers, agents, and all those acting in concert with them from committing in the future those violations of law herein alleged;
6. For an order awarding Plaintiff and the putative Class members compensatory damages, including lost wages, earnings, liquidated damages, penalties, and other employee benefits, restitution, recovery of all money/property, actual damages, and all other sums of money owed to Plaintiff and putative Class members, together with interest on these amounts according to proof;
7. For an order awarding Plaintiff and putative Class members civil penalties pursuant to the California Labor Code, and the laws of the State of California, with interest thereon;
8. For an order awarding civil penalties to the fullest extent provided for by the PAGA;
9. For an order awarding reasonable attorneys' fees as provided by the California Labor

Code, California Code of Civil Procedure § 1021.5, the laws of the State of California,
and/or other applicable law;

10. For all costs of suit;

11. For interest on any penalties awarded, as provided by applicable law; and

12. For such other and further relief as this Court deems just and proper.

Respectfully submitted,



Carolyn H. Cottrell

Caroline N. Cohen

Ryan M. Hecht

SCHNEIDER WALLACE

COTTRELL KONECKY LLP

*Attorneys for Plaintiff, Class Members, and Aggrieved
Employees*

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Date: December 8, 2020

Carolyn Cohen

Attorneys for Plaintiff, Class members, and Aggrieved Employees