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UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA

GLENN FITE, individually and acting on
behalf of a class of similarly situated
employees,

Plaintiff,

vs.

SHAMROCK FOODS COMANY, an Arizona
Corporation, JOHN FERNANDES, an
individual, and DOES 1-50,

Defendants.

Case No. _____

CLASS ACTION COMPLAINT FOR:

1. Violation of Fair Labor Standards Act;
2. Failure to Pay California Overtime;
3. Failure to Pay California Minimum and Contractual Wages;
4. Failure to Provide Rest Breaks or Pay Additional Wages in Lieu Thereof;
5. Failure to Provide Meal Periods or Pay Additional Wages in Lieu Thereof;
6. Failure to Pay All Wages Owed Upon Termination or Resignation;
7. Knowing and Intentional Failure to Comply with Itemized Employee Wage Statement Provisions; and
8. Violation of Unfair Competition Law.

NON-CLASS COMPLAINT FOR:

9. Penalties pursuant to California Labor Code sections 2698 et seq.

DEMAND FOR JURY TRIAL

1 PLAINTIFF Glenn Fite (hereinafter “PLAINTIFF”) brings this action against SHAMROCK
2 FOODS COMPANY, JOHN FERNANDES, and DOES 1-50 (hereafter “DEFENDANTS”) on behalf
3 of themselves, all others similarly situated, and the State of California. PLAINTIFF asserts the
4 allegations based on personal knowledge and on information and belief. The allegations below made
5 on information and belief are likely to have evidentiary support after further opportunity for discovery
6 and investigation.

7
8 **I. NATURE OF THE ACTION**

9 This action is brought on behalf of PLAINTIFF in four capacities: (a) individually; (b) as
10 Federal Rules of Civil Procedure, Rule 23 representative of a class or various subclasses of non-
11 exempt employees employed by, or formerly employed by DEFENDANTS; (c) as a Fair Labor
12 Standards Act (“FLSA”) collective action (29 U.S.C. § 216(b)); (d) as a class representative in the
13 interest of the general public under the Unfair Competition Law (“UCL”) (Cal. Bus. & Prof. Code §§
14 17200 et seq.).

15 This action also seeks relief under the Private Attorneys General Act (“PAGA”) (Cal. Lab.
16 Code §§ 2698 et seq.), on a non-class representative basis. As set forth in the case of *Arias v. Superior*
17 *Court*, the California Supreme Court held that an aggrieved employee seeking PAGA penalties on
18 behalf of current and former employees does so as a “proxy” for the State of California and, thus,
19 need not satisfy class certification requirements. *Arias, supra*, 46 Cal. 4th 969, 981 (2009). As such,
20 PLAINTIFF’S ninth cause of action on behalf of DEFENDANTS’ workforce is not subject to class
21 certification requirements. After satisfying administrative requirements under Labor Code § 2699.3,
22 PAGA empowers an aggrieved employee to seek penalties on behalf of himself, the State and current
23 or former employees that are otherwise recoverable only by the Labor Commissioner. PLAINTIFF
24 has complied with Labor Code § 2699.3 and is thus entitled to assert a PAGA claim. True and correct
25 copies of the notice demonstrating compliance with Labor Code § 2699.3 are attached hereto as
26 **Exhibit A.**

27 DEFENDANTS’ violations revolve around their failure to pay all wages when due; failure to
28 pay employees overtime wages; failure to comply with minimum and contractual wage requirements;

1 failure to comply with rest and meal period requirements; and failure to comply with the record-
2 keeping, wage statement and payment deadline provisions of California law. As a result of these
3 violations, DEFENDANTS have violated the Fair Labor Standards Act, 29 U.S.C. §§ 216 and 216(b),
4 as well as provisions of California labor laws and the California Unfair Competition Law, and are
5 liable to the State of California, PLAINTIFF and current and former employees for civil penalties,
6 pursuant to PAGA.

7 8 **JURISDICTION & VENUE**

9 1. This Court is a proper venue, since substantially all events giving rise to this lawsuit
10 have occurred in this District, and specifically in Sacramento County.

11 2. Subject matter jurisdiction of this Court is based on the Fair Labor Standards Act, 29
12 U.S.C. §§ 201, et seq. and the supplemental jurisdiction of this Court.

13 3. At all times relevant, on information and belief, the annual gross volume of sales of
14 DEFENDANTS was not less than \$500,000.00, and many products used were manufactured outside
15 the State of California.

16 4. At all times relevant, DEFENDANTS conducted business through interstate
17 commerce such that they are covered by the Fair Labor Standards Act.

18 **II. PARTIES**

19 **PLAINTIFF**

20
21 5. Plaintiff GLENN FITE ("PLAINTIFF") is a California resident. During the proposed
22 class period, PLAINTIFF was employed by DEFENDANTS as a non-exempt employee at
23 DEFENDANTS' facilities in Sacramento, California. PLAINTIFF was hired pursuant to written and
24 implied contracts of employment impliedly or explicitly promising to pay in conformance with
25 Federal and California wage and hour requirements. The text of any written terms of contract are
26 contained within DEFENDANTS' records. As such, by operation of law and implied into any
27 employment contract, PLAINTIFF must be paid in conformance with California labor laws and
28

1 therefore be paid at least \$17.00 per hour for all hours worked during 2018 and 2019. PLAINTIFF
2 has worked for DEFENDANTS during the proposed class period as defined below. PLAINTIFF was
3 employed by DEFENDANTS to work in DEFENDANTS' facilities in Sacramento, California as a
4 non-exempt warehouse order selector. As a result of DEFENDANTS' violations described herein,
5 PLAINTIFF has suffered injury in fact and has lost money or property. As such, he is an aggrieved
6 employee.

7 6. On information and belief, PLAINTIFF, and each member of the class he seeks to
8 represent, were regularly subjected to, or had personal knowledge of, the violations described in this
9 Complaint and/or the allegations contained herein made on information and belief based upon
10 investigation of counsel. Each member of the purported class of non-exempt employees working at
11 any SHAMROCK FOODS COMPANY facility are therefore witnesses to the allegations of this
12 Complaint.

13
14 **DEFENDANTS**

15 7. On information and belief, Defendant SHAMROCK FOODS COMPANY is an
16 Arizona corporation with the following corporate address: 3900 E. Camelback Road, Ste. 300,
17 Phoenix, AZ 85018. The address for the corporation's Agent for Service of Process, CT
18 CORPORATION SYSTEM, is 818 West Seventh Street, Suite 930, Los Angeles, CA 90017.
19 PLAINTIFF alleges that at all relevant times, SHAMROCK FOODS COMPANY employed, or
20 otherwise suffered or permitted to work PLAINTIFF and the putative class members. SHAMROCK
21 FOODS COMPANY conducts business in California at their facilities located at 856 National Drive,
22 Sacramento, CA 95834.

23 8. On information and belief, Defendant JOHN FERNANDES is a supervisor for
24 SHAMROCK FOODS COMPANY and directly caused the violations alleged herein. JOHN
25 FERNANDES is hereafter referred to as a "Non-Corporate Defendant." Joint and severable liability
26 attaches against a Non-Corporate Defendant under the following:

27 (a) A Non-Corporate Defendant is liable under California Labor Code § 558.1 in that he
28 is a "person" who violated or caused to be violated overtime and other labor laws found at Labor

Code section 203, 226, 226.7, 1193.6, 1194 and, among other requirements under the Labor Code and Wage Orders.

(b) A Non-Corporate Defendant is liable under the PAGA as they violated California Labor Code §§ 558 and 1197.1 in that he is a “person” who violated or caused to be violated overtime and other labor laws found in the Labor Code, as well as other requirements under the Wage Orders.

9. JOHN FERNANDES is liable under PAGA and Labor Code §§ 558, 1197.1, and 2699(f) as a “person” who violated or caused to be violated the Labor Code and Wage Orders listed in this complaint, by exercising control over and involvement in the creation and/or implementation of the wage and hour practices and policies that are the subject matter of this complaint.

10. DEFENDANTS’ violations as described in this complaint were knowing, intentional, deliberate and willful.

III. FACTUAL BACKGROUND

11. This is a Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure and a Collective action pursuant to FSLA, 29 U.S.C. § 216(b), to vindicate the rights afforded the class by the FLSA, California Labor Code and California Business and Professions Code §§ 17200 et seq., and is brought on behalf of PLAINTIFF and a Class comprised of all current and former non-exempt employees of DEFENDANTS at DEFENDANTS’ California facilities. The action is also a non-class representative action pursuant to the PAGA. PLAINTIFF seeks recovery of wages and compensation owed for the maximum allowable period (the “Class Period”), as set forth below. For at least four years prior to the filing of this action and to the present, DEFENDANTS maintained and enforced against their non-exempt employees the following unlawful practices and policies, in violation of FLSA and/or California wage and hour laws:

- a. failure to pay Class Members, including PLAINTIFF, all minimum and overtime wages due pursuant to the Fair Labor Standards Act, California Labor Code and Industrial Welfare Commission Wage Orders by, for example, not compensating employees for all hours worked, and disincentivizing employees from taking their meal and rest periods because they will suffer decreased wage rates as a result, and

1 dissuading employees from taking meal and rest periods because employees who fail
2 to meet DEFENDANTS' productivity requirements suffer disciplinary measures;

3 b. failure to provide rest periods or to pay PLAINTIFF and the Class additional pay for
4 missed rest periods, in violation of California law by, for example, disincentivizing
5 employees from taking their rest periods because they will suffer decreased wage rates
6 as a result, and dissuading employees from taking rest periods because employees who
7 fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures;

8 c. failure to provide timely unpaid meal periods of at least 30 minutes per five hours
9 worked on shifts of at least six hours, and failing to pay PLAINTIFF and the Class
10 additional pay for such missed meal periods in violation of California law by, for
11 example, disincentivizing employees from taking their meal periods because they will
12 suffer decreased wage rates as a result, and dissuading employees from taking meal
13 periods because employees who fail to meet DEFENDANTS' productivity
14 requirements suffer disciplinary measures;

15 d. failure to provide Class Members, including PLAINTIFF, with accurate itemized wage
16 statements as required by California law because, for example, wage statements did
17 not have accurate hours worked;

18 e. failure to pay Class Members, including PLAINTIFF, statutory penalties pursuant to
19 California Labor Code §§ 201, 202, 203 and other California law upon termination or
20 resignation;

21 12. On information and belief, DEFENDANTS were on notice of the improprieties alleged
22 herein, and intentionally refused to rectify their unlawful policies. DEFENDANTS' violations alleged
23 above, during all relevant times herein was willful and deliberate.

24 13. DEFENDANTS have made it difficult to account with precision for the unlawfully
25 withheld wages due DEFENDANTS' non-exempt employees, including PLAINTIFF, during all
26 relevant times herein, because DEFENDANTS did not accurately record all hours worked.

IV. CLASS ACTION ALLEGATIONS

14. PLAINTIFF brings this action on behalf of himself and all similarly situated workers pursuant to Rule 23 of the Federal Rules of Civil Procedure because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable. PLAINTIFF seeks to represent the following class:

CALIFORNIA SHAMROCK FOODS COMPANY CLASS: All non-exempt persons who are employed or have been employed by DEFENDANTS in California within four (4) years of the filing of this Complaint through the date of final disposition of this action.

15. PLAINTIFF reserves the right to amend or modify the class description with greater specificity to further divide into subclasses or to limit to particular issues.

16. PLAINTIFF also seeks to represent the following opt-in FLSA Collective:

SHAMROCK FOODS COMPANY FLSA COLLECTIVE: All non-exempt persons who are or have been employed by DEFENDANTS in the State of California and who, within three (3) years of the filing of this Complaint through the date of final disposition of this action.

17. On information and belief, the legal and factual issues are common to the Class and affected all Members of the Class. PLAINTIFF reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues.

A. Numerosity

18. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. While the precise number of Class Members has not been determined at this time, PLAINTIFF is informed and believes that DEFENDANTS during the relevant time periods likely employed more than a hundred non-exempt employees in California who are, or have been, affected by DEFENDANTS' unlawful practices as alleged herein. With turnover, the size of the class could potentially exceed two hundred members.

1 19. Upon information and belief, PLAINTIFF alleges that DEFENDANTS' employment
2 records would provide information as to the number and location of all Class Members. Joinder of
3 all members of the proposed Class is not practicable.

4 **B. Commonality**

5
6 20. There are questions of law and fact common to the Class predominating over any
7 questions affecting only individual Class Members. These common questions of law and fact include,
8 without limitation:

- 9 (a) Whether DEFENDANTS failed and continue to fail to pay overtime compensation in
10 violation of the FLSA, 29 U.S.C. § 201, et seq.;
- 11 (b) Whether DEFENDANTS violated §§ 17200 et seq. of the California Business and
12 Professions Code by the violation of California labor laws;
- 13 (c) Whether DEFENDANTS violated the California Labor Code and Wage Orders as a
14 result of the allegations described in this complaint;
- 15 (d) Whether DEFENDANTS violated the California Labor Code and Wage Orders by
16 compensating PLAINTIFF and other Class Members at rates below the required
17 overtime rate;
- 18 (e) Whether DEFENDANTS violated the California Labor Code and Wage Orders by
19 disincentivizing PLAINTIFF and Class Members from taking rest periods, while
20 failing to compensate said employees for missed rest periods in violation of California
21 law;
- 22 (f) Whether DEFENDANTS violated the California Labor Code and Wage Orders by
23 disincentivizing PLAINTIFF and Class Members from taking meal periods, while
24 failing to compensate said employees for missed meal periods in violation of
25 California law;
- 26 (g) Whether DEFENDANTS violated the California Labor Code and Wage Orders by
27 failing to, among other things, maintain accurate records of PLAINTIFF and other
28 Class Members' earned wages, work periods, hours worked and wages earned;

- 1 (h) Whether DEFENDANTS violated the California Labor Code and Wage Orders by
2 failing to pay all earned wages due and/or premium wages due and owing at the time
3 that the employment of any Class Members, including PLAINTIFF, ended;
- 4 (i) Whether DEFENDANTS failed to pay Class Members, including PLAINTIFF,
5 statutory penalties pursuant to California Labor Code §§ 201, 202, and 203;
- 6 (j) Whether PLAINTIFF and other Class Members are entitled to damages, restitution,
7 wages, statutory penalties, premium wages, declaratory, injunctive and declaratory
8 relief, attorneys' fees, interest, and costs, and other relief pursuant to California Labor
9 Code and Wage Orders, Business and Professions Code §§ 17200 et seq.; and
- 10 (k) Whether PLAINTIFF, current and former employees, and the State of California are
11 entitled to penalties, civil penalties and wages pursuant to Labor Code §§ 2698 et seq.,
12 558 and 558.1, as a result of the violations listed above and herein.
- 13 (l) There are no individualized factual or legal issues for the Court to resolve that would
14 prevent this case from proceeding as a class action.

15
16 **C. Typicality**

17 21. The claims of the named PLAINTIFF are typical of the claims of the Class.
18 PLAINTIFF and all members of the Class sustained injuries and damages arising out of and caused
19 by DEFENDANTS' common course of conduct in violation of Federal and California laws,
20 regulations, and statutes as alleged herein.

21
22 **D. Adequacy of Representation**

23 22. PLAINTIFF will fairly and adequately represent and protect the interests of the
24 members of the Class. PLAINTIFF has no interests which are adverse to the Class. Counsel who
25 represents PLAINTIFF are competent and experienced in litigating large employment class actions.

26
27 **E. Superiority of Class Action**

23. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each member of the Class has been damaged and is entitled to recovery by reason of DEFENDANTS' unlawful policy and/or practices described herein.

24. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. PLAINTIFF is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

V. CAUSES OF ACTION

25. All causes of action described herein, except the Ninth Cause of Action (PAGA Cause of Action), are brought on behalf of PLAINTIFF, both individually and on behalf of the Class.

FIRST CAUSE OF ACTION

FAILURE TO PAY OVERTIME WAGES AND MINIMUM WAGES

Violation of the Fair Labor Standards Act

29 U.S.C. §§ 207, 216(b), and 255(a)

PLAINTIFF against SHAMROCK FOODS COMPANY and DOES 1-50

26. PLAINTIFF re-alleges and incorporates the allegations of paragraphs 1-25 as if fully stated herein.

27. At all relevant times herein, PLAINTIFF'S employment was subject to the provisions of the Fair Labor Standards Act of 1938, as amended ("FLSA"), 29 U.S.C. §§ 201, et seq.

28. DEFENDANTS are engaged in commerce or in the production of goods for commerce as defined by 29 U.S.C. § 203 (r) & (s) and related Department of Labor regulations.

29. DEFENDANTS routinely require and/or suffered or permitted PLAINTIFF, including opt-in consenters and similarly situated workers, to work more than 40 hours per week, and routinely without paying them any overtime premium for hours worked in excess of 40 hours per week. DEFENDANTS' violations largely stem from an illegal policy that disincentivizes employees

1 from taking their meal and rest periods because they will suffer decreased wage rates as a result. This
2 unlawful policy further dissuades employees from taking meal and rest periods because employees
3 who fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures. Employees
4 work off-the-clock during meal periods and are therefore not compensated the appropriate minimum
5 and overtime wages.

6 30. In failing to pay PLAINTIFF, including opt-in consenters and similarly situated
7 workers, overtime wages at one-and-one-half times their regular rate of pay, DEFENDANTS
8 willfully violated the FLSA.

9 31. As a direct and proximate result of DEFENDANTS' failure to pay proper wages under
10 the FLSA, PLAINTIFF, including opt-in consenters and similarly situated workers, incurred general
11 damages in the form of lost overtime wages in an amount to be proved at trial.

12 32. DEFENDANTS intentionally, with reckless disregard for their responsibilities under
13 the FLSA, and without good cause, failed to pay PLAINTIFF, including opt-in consenters and
14 similarly situated workers, their proper wages, and thus DEFENDANTS are liable to PLAINTIFF,
15 including opt-in consenters and similarly situated workers, for liquidated damages in an amount equal
16 to their lost wages over a three year statute of limitations plus tolling from other class actions pursuant
17 to 29 U.S.C. §§ 216(b) & 255(a) of the FLSA. PLAINTIFF, including opt-in consenters and similarly
18 situated workers, were required to retain legal assistance in order to bring this action and, as such, are
19 entitled to an award of reasonable attorney's fees pursuant to the FLSA. As a result, Defendant
20 SHAMROCK FOODS COMPANY is liable for all legally available remedies including those
21 aforementioned in this complaint.

22
23 **SECOND CAUSE OF ACTION**

24 **FAILURE TO PAY OVERTIME WAGES**

(California Labor Code §§ 500, 510, 1194 and Industrial Welfare Commission Wage Orders)

25 PLAINTIFF against SHAMROCK FOODS COMPANY and DOES 1-50

26 33. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.
27
28

1 34. Applicable California Industrial Welfare Commission (IWC) Wage Orders require
2 that overtime hours be compensated as follows:

3 (a) One and one-half (1 1/2) times the employee's regular rate of pay for all
4 hours worked in excess of eight (8) hours up to and including 12 hours in any
5 workday, and for the first eight (8) hours worked on the seventh (7th)
consecutive day of work in a workweek; and

6 (b) Double the employee's regular rate of pay for all hours worked in excess
7 of 12 hours in any workday and for all hours worked in excess of eight (8)
hours on the seventh (7th) consecutive day of work in a workweek.

8 The Wage Orders are authorized under California Labor Code § 1185.

9 35. California Labor Code § 500 defines, "workday" and "day" to mean any consecutive
10 24-hour period commencing at the same time each calendar day, and defines "workweek" and "week"
11 to mean "any seven consecutive days starting with the same calendar day each week."

12 36. As described herein, DEFENDANTS violated the above Wage Orders, by employing
13 PLAINTIFF and the Class in excess of the limits provided by these wage orders without time and one
14 half or double time pay of regular rates. DEFENDANTS' violations largely stem from an illegal
15 policy that disincentivizes employees from taking their meal and rest periods because they will suffer
16 decreased wage rates as a result. This unlawful policy further dissuades employees from taking meal
17 and rest periods because employees who fail to meet DEFENDANTS' productivity requirements
18 suffer disciplinary measures. Employees work off-the-clock during meal periods and are therefore
19 not compensated the appropriate minimum and overtime wages.

20 37. PLAINTIFF, individually and on behalf of the Class, may enforce these provisions
21 pursuant to Labor Code § 1194(a) and Business and Professions Code §§ 17200 et seq. California
22 Labor Code § 1194(a) states:

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

1 2017-2021 is found in the Wage Orders which state that:

2 Every employer shall pay to each employee wages not less than . . . six dollars
3 and seventy-five cents (\$6.75) per hour for all hours worked effective January
1, 2002 . . .

4 These Orders were amended to provide for a minimum wage of \$10.50 for all hours worked
5 during 2017, \$11.00 for all hours worked during 2018, \$12.00 for all hours worked during 2019,
6 \$13.00 for all hours worked during 2020, and \$14.00 for all hours worked during 2021.

7 45. The minimum wage provisions of California Labor Code are enforceable by private
8 civil action pursuant to California Labor Code § 1194(a) which states:

9 Notwithstanding any agreement to work for a lesser wage, any employee
10 receiving less than the legal minimum wage or the legal overtime
11 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
12 compensation, including interest thereon, reasonable attorney's fees and costs
of suit.

13 46. As described in California Labor Code §§ 1185 and 1194.2, any action for wages
14 incorporates the applicable Wage Order of the California Industrial Welfare Commission.

15 47. California Labor Code § 1194.2 also provides for the following remedies:

16 In any action under Section 1194 . . . to recover wages because of the payment
17 of a wage less than the minimum wages fixed by an order of the commission,
an employee shall be entitled to recover liquidated damages in an amount equal
18 to the wages unlawfully unpaid and interest thereon.

19 48. DEFENDANTS have the ability to pay minimum wages for all time worked and have
20 willfully refused to pay such wages with the intent to secure for DEFENDANTS a discount upon this
indebtedness with the intent to annoy, harass, oppress, hinder, delay, or defraud PLAINTIFF and the
21 Class and have, therefore, also violated California Labor Code § 226(a).

22 49. As a result of DEFENDANTS' violations of the minimum wage and agreed upon
23 contractual rates by failing to record and pay wages for all hours worked, DEFENDANTS violated
24 California Labor Code § 226(a) by inaccurately stating gross wages earned, total hours worked,
25 deductions, net wages, gross wages, and other issues as described above. DEFENDANTS also
26 violated California Labor Code § 226.6 and IWC Wage Orders.

27 50. Under California Labor Code § 558.1, "Any employer or other person acting on behalf
28

1 of an employer, who violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
2 2802, may be held liable as the employer for such violation.” This applies to the individual defendant
3 named herein because they violated or caused to be violated the Labor Code on behalf of the
4 employer.

5 51. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid minimum
6 wages, including liquidated damages in an amount equal to the minimum wages unlawfully unpaid,
7 interest thereon and reasonable attorney’s fees and costs of suit pursuant to California Labor Code
8 §§ 1194(a) and 218.5.

9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO PROVIDE REST PERIODS OR COMPENSATION IN LIEU THEREOF**
11 **(California Labor Code §§ 203, 226, 226.7, 1194 and IWC Wage Orders)**

12 **PLAINTIFF against SHAMROCK FOODS COMPANY and DOES 1-50**

13 52. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

14 53. California Labor Code § 226.7 states:

15 (a) No employer shall require any employee to work during any meal or rest
16 period mandated by an applicable order of the Industrial Welfare Commission.

17 (b) If an employer fails to provide an employee a meal period or rest period in
18 accordance with an applicable order of the Industrial Welfare Commission, the
19 employer shall pay the employee one additional hour of pay at the employee's
20 regular rate of compensation for each work day that the meal or rest period is
21 not provided.

22 54. The applicable Wage Order states with regards to rest periods:

23 (A) Every employer shall authorize and permit all employees to take rest
24 periods, which insofar as practicable shall be in the middle of each work
25 period. The authorized rest period time shall be based on the total hours worked
26 daily at the rate of ten (10) minutes net rest time per four (4) hours or major
27 fraction thereof. However, a rest period need not be authorized for employees
28 whose total daily work time is less than three and one-half (3 1/2) hours.
Authorized rest period time shall be counted as hours worked for which there
shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance
with the applicable provisions of this Order, the employer shall pay the

1 employee one (1) hour of pay at the employee's regular rate of compensation
2 for each work day that the rest period is not provided.

3 55. DEFENDANTS violated California Labor Code § 226.7 and the wage orders by
4 disincentivizing employees from taking their rest periods because they will suffer decreased wage
5 rates as a result, and further dissuading employees from taking rest periods because employees who
6 fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures.
7 DEFENDANTS also failed to provide one hour of additional wages at the employees' regular rate of
8 compensation for each workday that the rest periods were not provided.

9 56. PLAINTIFF and, on information and belief, the Class Members he seeks to represent,
10 did not voluntarily or willfully waive rest periods. Any express or implied waivers obtained from
11 PLAINTIFF and/or Class Members was not willfully obtained, were not voluntarily agreed to, were
12 a condition of employment, or were part of an unlawful contract of adhesion. DEFENDANTS did
13 not provide, permit or authorize PLAINTIFF and, on information and belief, Class Members to take
14 rest periods in accordance with law.

15 57. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and the Class he seeks
16 to represent have been deprived of wages, which is an amount resulting directly from the acts
17 complained of.

18 58. Under California Labor Code § 558.1, "Any employer or other person acting on behalf
19 of an employer, who violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
20 2802, may be held liable as the employer for such violation." This applies to the individual defendant
21 named herein because they violated or caused to be violated the Labor Code on behalf of the
22 employer.

23 59. WHEREFORE, PLAINTIFF and the Class are entitled to recover the unpaid additional
24 or premium wages, interest thereon, reasonable attorney's fees and costs of suit pursuant to California
25 Labor Code § 1194(a).

26 //

27 //

28 //

FIFTH CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS OR COMPENSATION IN LIEU THEREOF
(Labor Code §§ 203, 226, 226.7, 512, 1194 and IWC Wage Orders)

PLAINTIFF against SHAMROCK FOODS COMPANY and DOES 1-50

60. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

61. DEFENDANTS failed to comply with the requirement under California law regarding meal periods. PLAINTIFF and, on information and belief, the Class were not afforded meal periods as required by California law, because DEFENDANTS disincentivize employees from taking their meal periods because they will suffer decreased wage rates as a result, and further dissuade employees from taking meal periods because employees who fail to meet DEFENDANTS' productivity requirements suffer disciplinary measures. On information and belief, PLAINTIFF and the Class were not compensated for missed meal periods.

62. California Labor Code § 226.7 states:

(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest period is not provided.

63. The applicable wage order issued by the Industrial Welfare Commission states with regards to meal periods:

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

1 (B) If an employer fails to provide an employee a meal period in accordance
2 with the applicable provisions of this Order, the employer shall pay the
3 employee one (1) hour of pay at the employee's regular rate of compensation
4 for each work day that the meal period is not provided.

5 A similar provision is contained at California Labor Code § 512.

6 64. PLAINTIFF and the Class did not voluntarily or willfully waive rest and/or meal
7 periods. Any express or implied waivers obtained from PLAINTIFF and the Class was not willfully
8 obtained or voluntarily agreed to, but rather was a condition of employment or part of an unlawful
9 contract of adhesion.

10 65. PLAINTIFF and the Class were scheduled and required to work for periods of more
11 than five hours without an off-duty meal period of at least 30 minutes, and DEFENDANTS violated
12 California law by failing to comply with the meal period requirements mandated by Labor Code §
13 226.7 and the applicable Wage Orders. As such, DEFENDANTS are liable for one hour of pay at the
14 employee's regular rate of compensation for each workday that meal periods were not provided.

15 66. By failing to keep adequate time records required by Labor Code §§ 226 and 1174(d),
16 DEFENDANTS have injured PLAINTIFF and the Class and made it difficult to calculate the unpaid
17 meal period compensation due to PLAINTIFF and the Class.

18 67. As a result of the unlawful acts of DEFENDANTS, PLAINTIFF and the Class have
19 been deprived of wages in amounts to be determined at trial, and are entitled to recovery of such
20 amounts, plus interest and penalties thereon, attorneys' fees, and costs, under Labor Code §§ 203,
21 226, 226.7, 512, 1194, and applicable Wage Orders.

22 68. Under California Labor Code § 558.1, "Any employer or other person acting on behalf
23 of an employer, who violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
24 2802, may be held liable as the employer for such violation." This applies to the individual defendant
25 named herein because they violated or caused to be violated the Labor Code on behalf of the
26 employer.

27 69. WHEREFORE, PLAINTIFF and the Class request relief as described herein and
28 below.

SIXTH CAUSE OF ACTION

**FAILURE TO PAY TIMELY WAGES AFTER TERMINATION OR RESIGNATION
(California Labor Code §§ 201, 202 & 203)**

PLAINTIFF against SHAMROCK FOODS COMPANY and DOES 1-50

70. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

71. California Labor Code § 201(a) states:

If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately...

72. California Labor Code § 202(a) states:

If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting.

73. DEFENDANTS willfully failed to timely pay PLAINTIFF and the Class all of their wages due for work performed and this failure continued through the time in which PLAINTIFF and many Class Members quit or were discharged from their employment with DEFENDANTS. As a result, DEFENDANTS violated California Labor Code §§ 201 and 202.

74. California Labor Code § 203 states:

If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.5, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced; but the wages shall not continue for more than 30 days... Suit may be filed for these penalties at any time before the expiration of the statute of limitations on any action for the wages from which the penalties arose.

1 75. The statute of limitations for an action for the wages at issue is four years pursuant to
2 California Business and Professions Code § 17208 and California case law. As noted above,
3 DEFENDANTS violated California Labor Code §§ 201 and 202 by failing to pay non-exempt
4 employees who quit, were involuntarily terminated, released after a specific job assignment or time
5 duration, or were otherwise discharged all of the wages due pursuant to the timelines provided in
6 those sections. DEFENDANTS willfully failed to pay all wages due as the failure to pay was not
7 inadvertent or accidental.

8 76. PLAINTIFF and the Class he seeks to represent are entitled to compensation for all
9 forms of wages earned, including, but not limited to, compensation for work done “off-the-clock”
10 and/or at hourly rates below the minimum or double wage, overtime premium wages, additional
11 wages for unprovided rest and meal periods, and other claims described in this complaint, but to date
12 have not received such compensation therefore entitling them to penalties under Labor Code § 203.

13 77. More than 30 days have passed since PLAINTIFF and many affected Class Members
14 have left DEFENDANTS’ employ, and on information and belief, have not received payment
15 pursuant to Labor Code §§ 201, 202 and 203. As a consequence of DEFENDANTS’ willful conduct
16 in not paying all earned wages, PLAINTIFF and many Class Members are entitled to 30 days’ wages
17 as a premium wage or penalty under California Labor Code § 203.

18 78. Under California Labor Code § 558.1, “Any employer or other person acting on behalf
19 of an employer, who violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
20 2802, may be held liable as the employer for such violation.” This applies to the individual defendant
21 named herein because they violated or caused to be violated the Labor Code on behalf of the
22 employer.

23 79. WHEREFORE, PLAINTIFF and the Class he seeks to represent are entitled to
24 California Labor Code § 203 penalties in amounts to be determined at trial.

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SEVENTH CAUSE OF ACTION

**FAILURE TO PROVIDE ITEMIZED EMPLOYEE WAGE STATEMENT PROVISIONS
(California Labor Code §§ 226, 1174, 1175 and Wage Orders)**

PLAINTIFF against SHAMROCK FOODS COMPANY and DOES 1-50

80. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

81. California Labor Code § 226(a) states:

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 separately when wages are paid by personal check or cash, an accurate itemized statement in writing showing

- i) gross wages earned,
- ii) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,
- iii) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,
- iv) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,
- v) net wages earned,
- vi) the inclusive dates of the period for which the employee is paid,
- vii) the name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,
- viii) the name and address of the legal entity that is the employer, and
- ix) 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.

82. DEFENDANTS failed to provide “accurate itemized statements” to PLAINTIFF and Class Members because the wage statements:

- a. Falsely understated the gross wages earned by failing to pay for all hours worked
- b. Falsely understated the total hours worked by PLAINTIFFS and Class by ignoring the total of hours actually worked.
- c. Falsely understated the net wages earned by failing to pay for all hours worked.
- d. the name and address of the legal entity that is the employer
- e. Falsely understated the “number of hours worked at each hourly rate.”

PLAINTIFF and the Class suffered injury as a result of the above false wage statements.

83. California Labor Code §§ 226(e) and (g) provides for the remedy for the violations described above:

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

(g) An 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.

84. In addition, Section 1174 of the California Labor Code, and the Wage Orders, require DEFENDANTS to maintain and preserve, in a centralized location, among other items, records showing the names and addresses of all employees employed, payroll records showing the hours worked daily by and the wages paid to its employees. DEFENDANTS have created a uniform practice of knowingly and intentionally failing to comply with California Labor Code § 1174. The failure of DEFENDANTS, and each of them, to comply with California Labor Code § 1174 is unlawful pursuant to California Labor Code § 1175. When an employer fails to keep such records,

1 employees may establish the hours worked solely by their testimony and the burden of overcoming
2 such testimony shifts to the employer. *Hernandez v. Mendoza*, 199 Cal. App. 3d 721 (1988).

3 85. By failing to keep adequate time records required by Sections 226 and 1174 (d) of the
4 California Labor Code, DEFENDANTS have injured PLAINTIFF and Class Members and made it
5 difficult to calculate the unpaid wages due PLAINTIFF and members of the Class and PLAINTIFF
6 and each Class member so injured is entitled up to \$4,000.00 in penalties.

7 86. Under California Labor Code § 558.1, “Any employer or other person acting on behalf
8 of an employer, who violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or
9 2802, may be held liable as the employer for such violation.” This applies to the individual defendant
10 named herein because they violated or caused to be violated the Labor Code on behalf of the
11 employer.

12 87. WHEREFORE, PLAINTIFF and the Class he seeks to represent are entitled to
13 California Labor Code § 226(e) in an amount to be determined at trial, not to exceed \$4,000 per
14 PLAINTIFF and Class Members, cost of suit, attorneys’ fees and injunctive relief per California
15 Labor Code § 226(g).

16 **EIGHTH CAUSE OF ACTION**

17 ACTS IN VIOLATION OF UNFAIR COMPETITION LAW
18 (California Business & Professions Code §§ 17200 et seq.)

19 PLAINTIFF against SHAMROCK FOODS COMPANY

20 88. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

21 89. DEFENDANTS engaged in unlawful activity prohibited by California Business and
22 Professions Code §§ 17200 et seq. The actions of DEFENDANTS as alleged within this complaint,
23 create an unlawful and unfair business practices within the meaning of California Business and
24 Professions Code §§ 17200 et seq.

25 90. As described above, DEFENDANTS have conducted the following unlawful
26 activities:

- 27 a) violations of the FLSA, 29 U.S.C. §201, et seq. by failing to pay overtime
28 compensation;

1 b) violation of California Labor Code § 201, 202 and 203 by failing to pay all
2 wages earned and unpaid at the time of certain Class Members' discharge from
employment by DEFENDANTS;

3 c) violation of California Labor Code § 206 by failing to pay, without
4 condition and within the time set by the applicable article, all wages, or parts
to be due;

5 d) violation of California Labor Code § 216 by willfully refusing to pay wages
6 due and payable by falsely denying the amount or validity thereof, or that the
7 same is due, with intent to secure for itself any discount upon such
indebtedness, and with intent to annoy, harass, oppress, hinder, delay, or
defraud, the Class Members to whom such indebtedness is due;

8 e) violation of California Labor Code § 226 by failing to provide Class
9 Members with accurate wage statements;

10 f) violation of California Labor Code § 226.7 by disincentivizing employees
11 from taking their meal and rest periods because they will suffer decreased wage
12 rates as a result, and dissuading employees from taking meal and rest periods
13 because employees who fail to meet DEFENDANTS' productivity
requirements suffer disciplinary measures, and failing to provide said Class
14 Members one (1) hour additional wages at the non-exempt employee's regular
rate of compensation for each work day that the meal or rest period is not
provided;

15 g) violation of California Labor Code § 510 and the IWC Wage Orders by
16 failing to pay overtime;

17 h) violation of California Labor Code § 512 and IWC Wage Orders by failing
18 to provide timely, uninterrupted, 30-minute meal periods or premiums;

19 i) violation of California Labor Code § 1194 by failing to pay minimum and/or
20 overtime wages for all hours worked by Class Members;

21 91. DEFENDANTS' activities also constitute unfair practices in violation of California
22 Business and Professions Code §§ 17200 et seq., because DEFENDANTS' practices violate the above
23 noted laws, and/or violate an established public policy and/or the practice is immoral, unethical,
24 oppressive, unscrupulous, and substantially injurious to PLAINTIFF and the Class.

25 92. As a result of DEFENDANTS' violations of the Labor Code, PLAINTIFF has suffered
26 injury-in-fact and have lost money or property as a result of DEFENDANTS' practices. This injury-
27 in-fact and loss of money or property consists of the lost wages and other restitutionary remedies
28 provided by the California Labor Code as detailed in this complaint and other resulting harms. A

1 tally of these damages cannot readily be determined as the employment records are held exclusively
2 or nearly exclusively in DEFENDANTS' control. PLAINTIFF is entitled to restitution, an injunction,
3 declaratory and other equitable relief against such unlawful practices to prevent future damage for
4 which there is no adequate remedy at law, and to avoid a multiplicity of lawsuits. PLAINTIFF is also
5 seeking in the alternative, by this class action, restitutionary disgorgement of such monies into a fluid
6 recovery fund.

7 93. As a result of their unlawful acts, DEFENDANTS have reaped and continue to reap
8 unfair benefits and unlawful profits at the expense of PLAINTIFF and the Class he seeks to represent.
9 DEFENDANTS should be enjoined from this activity and made to disgorge these ill-gotten gains and
10 restore to PLAINTIFF and the members of the Class the wrongfully withheld wages pursuant to
11 California Business and Professions Code § 17203. PLAINTIFF is informed and believes, and
12 thereon alleges, that DEFENDANTS are unjustly enriched through their failure to pay legal wages,
13 and/or other remedies. PLAINTIFF is informed and believes, and thereon alleges, that PLAINTIFF
14 and members of the Class are prejudiced by DEFENDANTS' unfair trade practices.

15 94. As a direct and proximate result of the unfair business practices of DEFENDANTS,
16 PLAINTIFF, individually and on behalf of all employees similarly situated, are entitled to equitable
17 and injunctive relief, including full restitution and/or disgorgement of all wages which have been
18 unlawfully withheld from PLAINTIFF and members of the Class as a result of the business acts and
19 practices described herein and enjoining DEFENDANTS to cease and desist from engaging in the
20 practices described herein for the maximum time permitted pursuant to California Business and
21 Professions Code §17208, including any tolling.

22 95. The unlawful and unfair conduct alleged herein is continuing, and there is no
23 indication that DEFENDANTS will refrain from such activity in the future. PLAINTIFF believes
24 and alleges that if DEFENDANTS are not enjoined from the conduct set forth in this complaint, they
25 will, continue to violate California and Federal labor laws. PLAINTIFF further requests that the Court
26 issue a preliminary and permanent injunction.

27 96. WHEREFORE, PLAINTIFF and the Class he seeks to represent request relief as
28 described herein and below.

NINTH CAUSE OF ACTION

**PENALTIES FOR VIOLATIONS PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(California Labor Code §§ 2698 et seq., 558 and 558.1)**

PLAINTIFF against all DEFENDANTS

97. PLAINTIFF incorporates all preceding paragraphs as though fully set forth herein.

98. PLAINTIFF brings this representative claim for himself, the State of California and all other current and former employees of DEFENDANTS as a non-class claim, as expressly authorized by the statute.

99. This PAGA cause of action is brought against DEFENDANTS pursuant to provisions of the California Labor Code, including § 558, which imposes liability on “persons” (defined by Labor Code § 18 as “... any person, association, organization, partnership, business trust, limited liability company, or corporation.”) who violate the Labor Code or IWC regulations or cause these to be violated, and which provides for recovery of wages in addition to penalties. Section 558.1 is similar.

100. PLAINTIFF has complied with the PAGA’s administrative requirements. Specifically, in the manner prescribed in California Labor Code § 2699.3, PLAINTIFF gave notice to DEFENDANTS and the Labor & Workforce Development Agency (“LWDA”) of the Labor Code provisions that DEFENDANTS are alleged to have violated, as well as the facts and theories surrounding those allegations. The LWDA failed to respond within the time allotted by statute.

101. PLAINTIFF is an aggrieved employee within the meaning of California Labor Code § 2699(a). PLAINTIFF brings this cause on behalf of himself, the State of California and other aggrieved employees, i.e., current or former employees affected by the Labor Code violations alleged in this complaint.

102. Pursuant to Labor Code § 2699(a), PLAINTIFF seeks civil penalties as provided under applicable Labor Code sections for violations alleged herein.

103. To the extent that any violation of statute or regulation alleged herein does not carry a penalty, PLAINTIFF seeks civil penalties pursuant to Labor Code § 2699(f), which provides:

1
2 For all provisions of this code except those for which a civil penalty is
3 specifically provided, there is established a civil penalty for a violation of these
4 provisions, as follows: . . . (2) If, at the time of the alleged violation, the person
5 employs one or more employees, the civil penalty is one hundred dollars
6 (\$100) for each aggrieved employee per pay period for the initial violation and
7 two hundred dollars (\$200) for each aggrieved employee per pay period for
8 each subsequent violation.

9 The penalties sought by PLAINTIFF are to be distributed as mandated in Labor Code §
10 2699(i) – 75% to the State and the remaining to workers.

11 104. DEFENDANTS are liable to PLAINTIFF, the State and other current or former
12 employees as a result of the violations alleged in this complaint. PLAINTIFF is also entitled to an
13 award of attorneys’ fees and costs for bringing this claim as set forth below.

14 105. PLAINTIFF’S PAGA claim does not require class certification because both the
15 language of the PAGA and the express intent of the Legislature indicate that an aggrieved employee
16 may act in place of the State and bring a representative action on behalf of the State and other
17 employees without having to certify a class. California Labor Code § 2699 specifically states that an
18 aggrieved employee may bring an action on behalf of other employees, “[n]otwithstanding any other
19 provision of law...” The wording of the PAGA, which authorizes an aggrieved employee to bring an
20 action “on behalf of himself or herself and other current or former employees... [,]” is similar to the
21 former wording of California Business and Professions Code § 17204, which authorized a person or
22 organization to act “for the interests of itself, its members or the general public” The Legislature
23 has made clear that an action under the PAGA is in the nature of an enforcement action, with the
24 aggrieved employee acting as Private Attorney General to collect penalties from employers and
25 persons who violate labor laws. Such an action is fundamentally a law enforcement action designed
26 to protect the public and penalize the defendant for past illegal conduct. Restitution is not the primary
27 object of a PAGA action, as its purpose is not recovering damages, but civil penalties. The PAGA
28 does not preclude an employee from pursuing any other claim he may have available under law.

As such, PLAINTIFF individually holds a substantive right to stand in the shoes of the State
of California and bring this PAGA claim for the State and other current or former employees.

1 WHEREFORE, PLAINTIFF requests penalties pursuant to the PAGA as described herein and
2 any other relief this Court deems proper.

3
4 **VI. PRAYER**

5 WHEREFORE, PLAINTIFF prays for judgment as follows:

- 6 a) That the Court determine that this action may be maintained as a class and collective action
7 with the named PLAINTIFF appointed as class representative;
- 8 b) For the attorneys appearing on the above caption to be named class counsel;
- 9 c) For compensatory damages in an amount according to proof with interest thereon;
- 10 d) For a declaratory judgment that each of the DEFENDANTS violated the PLAINTIFF'S
11 and the Class Members' rights under FLSA, California Labor and Business and
12 Professions Codes as set forth in the preceding paragraphs;
- 13 e) That DEFENDANTS be ordered to make restitution to the Class due to their unfair
14 competition;
- 15 f) That DEFENDANTS be enjoined from continuing the unlawful course of conduct, alleged
16 herein;
- 17 g) For premium pay, wages, and penalties;
- 18 h) For attorneys' fees, interest and costs of suit;
- 19 i) For damages and liquidated damages;
- 20 j) For all other relief provided by the FLSA, the California Labor Code, and California
21 Business and Professions Code;
- 22 k) For such other and further relief as the Court deems just and proper pursuant to the
23 procedures detailed in Labor Code §§ 2698 et seq.;
- 24 l) For all provisions of the Labor Code violated as described above except those for which a
25 civil penalty is specifically provided, a civil penalty of one hundred dollars (\$100) for each
26 aggrieved employee per pay period for the initial violation and two hundred dollars (\$200)
27 for each aggrieved employee per pay period for each subsequent violation;
- 28

1 m) For all provisions of the Labor Code violated as described above for which a civil penalty
2 is specifically provided, civil penalties for each aggrieved employee as specifically
3 provided by statute;

4 n) For such other and further relief as the Court deems just and proper.

5
6 **DEMAND FOR JURY TRIAL**

7 PLAINTIFF hereby demands trial of his and the Class' claims by jury to the extent authorized
8 by law.

9
10 Dated: January 5, 2021

MALLISON & MARTINEZ

11
12 By: /s/ Liliana Garcia

13 Stan S. Mallison
14 Hector R. Martinez
15 Liliana Garcia

16 Attorneys for Plaintiff
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