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Clerk of the Superior Court
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF MERCED**

14 GREGORIO RODRIGUEZ, on behalf of
himself and others similarly situated,

15 Plaintiffs,

17 v.

18 CAVT, LLC, a Delaware limited liability
company, doing business as Cerritos Nissan;
19 BWNVT Motors, a Delaware limited liability
company, doing business as Serramonte Ford;
20 FFBH Motors, LLC, a Delaware limited
liability company, doing business as Frontier
21 Ford; MVVT Motors, LLC, a Delaware limited
liability company, doing business as South
22 County Lexus; and DOES 1 through 100,
23 inclusive,

24 Defendants.

Case No. 21CV-03890

**CLASS AND REPRESENTATIVE
ACTION COMPLAINT FOR:**

- 1. Failure to Pay Minimum Wages
- 2. Failure to Pay Overtime Wages
- 3. Meal Period Liability under Labor Code § 226.7
- 4. Rest Break Liability under Labor Code § 226.7
- 5. Failure to Provide Accurate Itemized Employee Wage Statements
- 6. Failure to Pay All Wages Owed Timely and Upon Separation of Employment
- 7. Failure to Reimburse for Business Expenses
- 8. Violation of Labor Code § 1174(d)
- 9. Violation of Business & Professions Code §§ 17200, et seq.
- 10. Penalties Pursuant to Labor Code § 2699

DEMAND FOR JURY TRIAL

Plaintiff Gregorio Rodriguez (“Plaintiff”), on behalf of himself, the State of California, and all others similarly situated, alleges and complains of defendants CAVT, LLC, a Delaware limited liability company, doing business as Cerritos Nissan; BWNVT Motors, a Delaware limited liability company, doing business as Serramonte Ford; FFBH Motors, LLC, a Delaware limited liability company, doing business as Frontier Ford; MVVT Motors, LLC, a Delaware limited liability company, doing business as South County Lexus; and DOES 1 through 100, inclusive (collectively, “Defendants”), and each of them, as follows:

I. INTRODUCTION

1. This is a class action pursuant to California Code of Civil Procedure section 382 on behalf of Plaintiff and the following class: *All current and former non-exempt employees, including employees paid hourly and employees paid, in whole or part, on a commission basis, who worked for Defendants in the State of California from four years prior to the filing of the Complaint, and continuing to final judgment* (the “Class” or “Class Members”).

2. Throughout the time period involved in this case, Defendants willfully maintained a policy and/or practice of failing to pay all wages, including minimum and overtime wages, for all hours worked; failing to provide compliant duty-free meal periods; failing to authorize and permit compliant duty-free rest breaks; failing to maintain and provide accurate itemized wage statements; failing to reimburse business expenses; and failing to pay all wages owed timely and upon separation of employment. Defendants’ illegal conduct has also given rise to derivative claims for unfair business practices and violation of the Private Attorneys General Act of 2004 (“PAGA”).

3. Plaintiff, on behalf of himself and all other similarly situated employees, pursuant to California Business & Professions Code sections 17200 through 17208, also seeks all monies owed but withheld and retained by Defendants to which Plaintiff and Class Members are entitled. Plaintiff seeks an order by the Court awarding restitution, injunctive relief, and all other legal and equitable relief allowed, plus interest, attorneys’ fees and costs.

4. Plaintiff, on behalf of himself and all other similarly situated aggrieved employees (the “Aggrieved Employees”), also brings this representative action against Defendants to recover

1 wages and penalties owed pursuant to Labor Code section 2699. Plaintiff was compelled to retain
2 the services of counsel to file this action to protect his interests and those of Aggrieved Employees
3 and has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor
4 Code section 2699.

5 5. The relevant time period for the claims under the PAGA discussed herein is one
6 year prior to the date Plaintiff filed his PAGA notice online with the California Labor &
7 Workforce Development Agency ("LWDA") and sent a letter by certified mail to Defendants.

8 6. For purposes of the allegations set forth herein, Class Members, along with
9 Aggrieved Employees comprising the PAGA representative action, are collectively referred to as
10 "Employees" except as otherwise specified.

11 **II. JURISDICTION AND VENUE**

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

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

20 9. Venue as to Defendants is proper in this judicial district pursuant to Code of Civil
21 Procedure section 395.5 because, upon information and belief, the obligations giving rise to
22 liability occurred in part in the County of Merced, State of California.

23 10. This case should be classified as complex according to California Rules of Court,
24 Rule 3.400, and assigned to a complex litigation judge and department because it is a class action,
25 will involve substantial documentary evidence and a large number of witnesses, is likely to
26 involve extensive motion practice raising difficult or novel issues that will be time-consuming to
27 resolve, and will require substantial post judgment judicial supervision.

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III. PARTIES

11. Plaintiff is a resident of California. At all relevant times herein, Defendants employed Plaintiff as a non-exempt employee and subjected him to the same employment policies and/or practices that affected Employees.

12. Plaintiff is informed and believes, and based thereon alleges, that Defendants are registered to do business in the State of California.

13. Plaintiff is informed and believes, and based thereon alleges, that Defendants do business in the State of California and, at all times hereinafter mentioned, were and are employers as defined in and subject to the California Labor Code and California Industrial Welfare Commission ("IWC") Occupational Wage Orders. During the relevant period, Defendants employed Plaintiff and Employees within the State of California.

14. The true names and capacities, whether individual, corporate, associate, or otherwise, of defendants sued herein as DOES 1 through 100, inclusive, are currently unknown to Plaintiff, who therefore sues defendants by such fictitious names under Code of Civil Procedure section 474. Plaintiff is informed and believes and based thereon alleges that each of the defendants designated herein as DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the defendants designated hereinafter as DOES when such identities become known.

15. Whenever, heretofore or hereinafter, reference is made to "Defendants," it shall include DOES 1 through 100 identified herein.

16. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to other Defendants. Plaintiff is further informed and believes, and based thereon alleges, that Defendants are joint employers in that they employed Plaintiff and Employees, at the same time and were operating as a joint enterprise and single entity during the relevant time periods.

1 17. California courts have recognized that the definition of “employer” for purposes of
2 enforcement of the California Labor Code goes beyond the concept of traditional employment to
3 reach irregular working arrangements for the purpose of preventing evasion and subterfuge of
4 California’s labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who
5 directly or indirectly, or through an agent or any other person, engages, suffers, or permits any
6 person to work or exercises control over the wages, hours, or working conditions of any person
7 may be liable for violations of the California Labor Code as to that person.

8 18. California law also permits and recognizes the piercing of a corporate veil between
9 sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal.App.4th 107,
10 155; *Greenspan v. LADT, LLC* (2010) 191 Cal.App.4th 486, 512. The single enterprise rule
11 applies where “there are two or more personalities, there is but one enterprise; and that this
12 enterprise has been so handled that it should respond, as a whole, for the debts of certain
13 component elements of it.” *Hasso, supra*, 227 Cal.App.4th at p. 155; *Greenspan, supra*, 191
14 Cal.App.4th at p. 512.

15 19. At all times throughout their employment, Plaintiff and Employees were regularly
16 and consistently subject to the common policies and/or practices utilized by Defendants.

17 20. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and
18 Employees to perform services from which they benefitted. Moreover, the aforementioned entities
19 had the right to exercise control over the wages, hours, and/or working conditions over Plaintiff
20 and Employees at all relevant times herein, so as to be considered joint employers.

21 **IV. FACTUAL BACKGROUND**

22 **Defendants Systematically Violated State Wage and Hour Laws**

23 21. Plaintiff is informed and believes that there are approximately five hundred Class
24 Members employed by Defendants within the State of California during the class period.
25 Defendants own and/operate automobile dealerships.
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22. Upon information and belief, Plaintiff and Employees are covered by IWC Wage Order Nos. 4-2001 and 7-2001.¹

23. Throughout the applicable period of time, Defendants did not pay Plaintiff and Employees at least the California minimum wage for all hours worked. Labor Code section 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code section 1194 entitles “any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage.” IWC Wage Order Nos. 4-2001 and 7-2001 also obligate employers to pay each employee minimum wages for all hours worked.

24. These minimum wage standards apply to each hour employees work for which they are not paid. Therefore, an employer’s failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee’s total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

25. Labor Code section 1194.2 authorizes employees to recover liquidated damages for violations of Labor Code section 1194. Where an employee, like Plaintiff and Employees, is not paid for all hours worked under Labor Code section 1194, the employee may recover minimum wages and liquidated damages for the time for which he or she received no compensation. *Sillah v. Command Int’l Sec. Servs.* (N.D. Cal. 2015) 154 F.Supp.3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby’s Rest. Grp., Inc.* (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.

26. Labor Code section 1197.1 authorizes employees who are paid less than the minimum wage fixed by an applicable state or local law, or by an order of the commission a civil

¹ Upon information and belief, Plaintiff alleges that IWC Wage Order Nos. 4-2001 and 7-2001 are applicable. However, Plaintiff reserves the right to amend and/or allege any other applicable Wage Order(s).

penalty, restitution of wages, and liquidated damages as follows: “(1) [f]or any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.”

27. Labor Code section 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the employee’s regular rate of pay. Further, Labor Code section 510 obligates an employer to compensate an employee at no less than twice the regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

28. Throughout the applicable period of time, Defendants have had a policy and/or practice of failing to pay overtime wages to Plaintiff and Employees for all overtime hours they worked. The work times of Plaintiff and Employees have been, and continue to be, greater than eight (8) hours per day and/or forty (40) hours per week. Yet, because Defendants did not pay Plaintiff and Employees wages for, *inter alia*, hours that were worked off the clock, Plaintiff and Employees were deprived wages at overtime premium amounts attributable to overtime hours. Moreover, the overtime that was paid was short because Defendants incorrectly calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the regular rate calculations for Plaintiff and Employees.

29. By their common policy and/or practice of requiring Plaintiff and Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the applicable overtime rate of pay, Defendants willfully violated the provisions of Labor Code sections 510 and 1198, as well as the relevant IWC Wage Order(s).

30. Employees should be separately compensated for rest periods in weeks where they are paid on a commission basis. *Vaquero v. Stoneledge Furniture, LLC* (2017) 9 Cal.App.5th 98.

1 Plaintiff and Employees paid, in whole or part, on a commission basis are owed unpaid wages for
2 rest periods for each workday in which they worked more than 3.5 hours, given Defendants’
3 failure to compensate Plaintiff and Employees separately for rest periods.

4 31. Defendants failed to fully compensate Plaintiff and Employees for “non-
5 productive” time (i.e., non-sales activity). Non-sales activity is compensable time. *See Stoneledge,*
6 *supra*; *Balasanyan v. Nordstrom* (S.D. Cal. 2012) 913 F.Supp.2d 1001.

7 32. Defendants failed to provide Plaintiff and Employees with timely duty-free meal
8 periods. Labor Code sections 226.7, 512, and IWC Wage Order Nos. 4-2001 and 7-2001 require
9 employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period
10 within the first five (5) hours of work. *Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th
11 1004, 1042 [“Accordingly, first meal periods must start after no more than five hours.”].
12 Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second
13 thirty (30) minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

14 33. Defendants denied Plaintiff and Employees meal periods that comply with Labor
15 Code sections 226.7, 512, and IWC Wage Order Nos. 4-2001 and 7-2001. Plaintiff and Employees
16 suffered late, short, interrupted, and/or missed first and second meal periods. *See Donohue v. AMN*
17 *Services, LLC* (2021) 11 Cal.5th 58 [the California Supreme Court reversed the Fourth Appellate
18 District and set forth two clear rules: (1) employers are not permitted to round time records when
19 determining if employees are entitled to meal premium pay, and (2) it is the employer’s burden to
20 show that compliant meal periods were provided to employees if the time records show
21 otherwise]. Plaintiff and Aggrieved Employees did not receive compliant meal periods within the
22 first five (5) hours of their work, and did not receive compliant second meal periods when working
23 shifts of ten (10) hours or more.

24 34. Defendants were also obligated but failed to provide Plaintiff and Employees with
25 net ten (10) minute rest breaks for work shifts exceeding four (4) hours or a major fraction thereof
26 worked as required by Labor Code section 226.7 and IWC Wage Order Nos. 4-2001 and 7-2001.
27 The California Supreme Court held in *Augustus v. ABM Security Services Inc.*, (2016) 2 Cal. 5th
28 257, that employees must be relieved of all duties during rest breaks pursuant to Labor Code

1 section 226.7 and Subdivision 12(A) of Wage Order No. 5-2001. The Court found that the Wage
2 Orders and the Labor Code require employers to “relinquish control over how employees spend
3 their time” and “relieve employees of all duties” during employees’ 10-minute rest periods.
4 Plaintiff and Employees did not receive compliant rest breaks.

5 35. In addition to failing to authorize and permit compliant meal and rest breaks,
6 Plaintiff and Employees were not compensated with one (1) hours’ worth of pay at their regular
7 rates of pay when they were not provided with compliant meal and rest breaks in accordance with
8 Labor Code section 226.7(b). *See Ferra v. Loews Hollywood Hotel, LLC* (July 15, 2021) Case No.
9 S259172.

10 36. Defendants violated Labor Code sections 2800 and 2802 by failing to pay and
11 indemnify Plaintiff and Employees for their necessary business expenditures and losses incurred
12 in direct consequence of the discharge of their duties.

13 37. Labor Code section 203 provides “if an employer willfully fails to pay...any wages
14 of an employee who is discharged or who quits, the wages of the employee shall continue as a
15 penalty...” for up to 30 days. Labor Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th 487,
16 492.

17 38. Due to Defendants’ noncompliant policies and/or practices described herein,
18 Plaintiff and Employees whose employment with Defendants concluded were not compensated
19 for, *inter alia*, all straight-time and overtime hours worked, and were not paid all meal and rest
20 break premiums owed at their regular rates of pay. Thus, Defendants have failed to pay Plaintiff
21 and Employees all wages, whose sums were certain, at the time of termination or within seventy-
22 two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter
23 in violation of Labor Code section 203.

24 39. Labor Code section 204 expressly requires that “[a]ll wages...earned by any person
25 in any employment are due and payable twice during each calendar month, on days designated in
26 advance by the employer as the regular paydays.” Pursuant to Labor Code section 204(d), these
27 requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly
28 payroll if the wages are paid not more than seven calendar days following the close of the payroll

period.” Due to Defendants’ failure to pay Plaintiff and Employees for, *inter alia*, all straight-time and overtime hours worked, Defendants failed to timely pay Plaintiff and Employees within seven (7) days of the close of the payroll period in accordance with Labor Code section 204 on a regular and consistent basis.

40. Through Labor Code section 210 and the PAGA, and to the extent permitted by law, Plaintiff and Employees are entitled to recover civil penalties for violations of Labor Code section 204.

41. Plaintiff and Employees were not furnished with accurate itemized wage statements that accurately showed their gross wages earned, net wages earned, premium payments at their regular rates of pay for noncompliant meal and rest breaks, all applicable hourly rates and corresponding number of hours worked at each hourly rate in effect during each pay period, and other information required by Labor Code section 226(a).

42. During the relevant period, Defendants have knowingly and intentionally failed to provide Plaintiff and Employees with the above-described writing through actions alleged herein in violation of Labor Code section 226. Plaintiff and Employees have been injured by Defendants’ intentional violation of Labor Code section 226(a) because they were denied both their legal right to receive, and their protected interest in receiving, accurate itemized wage statements.

43. In addition, because Defendants failed to provide the accurate and mandated information on the itemized wage statements, Plaintiff and Employees have been prevented by Defendants from determining, *inter alia*, if all hours worked were paid and the extent of the underpayment. Plaintiff had to file this lawsuit and perform computations in order to analyze whether, and to what extent, Plaintiff and Employees suffered underpayment, thereby causing Plaintiff to incur expenses and time lost. Thus, Plaintiff and Employees are owed the greater of all actual damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000.00), as provided for in Labor Code section 226(e).

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A. Numerosity

48. The potential members of the Class as defined are so numerous that joinder of all the members of the Class is not practicable. Plaintiff is informed and believes that there are approximately five hundred Class Members employed by Defendants within the State of California during the class period.

49. Plaintiff alleges Defendants’ employment records would provide information as to the number and location of all Class Members.

B. Commonality

50. There are questions of law and fact common to the Class that predominate over any questions affecting only individual Class Members. These common questions of law and fact include, without limitation:

- a. Whether Defendants’ failure to pay wages, without abatement or reduction, in accordance with the California Labor Code, was willful;
- b. Whether Defendants had a corporate policy and/or practice of failing to pay Class Members for all hours worked in violation of California law;
- c. Whether Defendants failed to pay at least the minimum wage to Class Members for all hours worked;
- d. Whether Defendants required Class Members to work over eight (8) hours per day and/or over forty (40) hours per week and failed to pay the legally required overtime compensation to Class Members;
- e. Whether Defendants failed to separately compensate Class Members paid on a commission basis for rest periods;
- f. Whether Defendants required Class Members to perform non-sales activities without compensation;
- g. Whether Defendants deprived Class Members of legally compliant meal periods and rest breaks;

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- 1 h. Whether Defendants had a corporate policy and/or practice of failing to pay
2 Class Members required premium payments for noncompliant (*e.g.*, short, late, interrupted, and/or
3 missed altogether) meal periods and rest breaks in violation of California law;
4 i. Whether Defendants failed to reimburse Class Members for necessary
5 business-related expenses and costs;
6 j. Whether Defendants failed to timely pay all wages due to Class Members
7 during their employment;
8 k. Whether Defendants failed to pay all wages due to Class Members within
9 the required time upon their discharge or resignation;
10 l. Whether Defendants complied with wage reporting as required by the
11 California Labor Code, including, *inter alia*, section 226;
12 m. Whether Defendants kept complete and accurate payroll records as required
13 by the California Labor Code, including, *inter alia*, section 1174(d);
14 n. Whether Defendants' conduct was willful or reckless;
15 o. Whether Defendants engaged in unfair business practices in violation of the
16 Unfair Competition Law, Business and Professions Code sections 17200, *et seq.*;
17 p. Whether Class Members are entitled to compensatory damages pursuant to
18 the California Labor Code;
19 q. The appropriate amount of damages, restitution, and/or monetary penalties
20 resulting from Defendants' violation of California law;
21 r. Whether Class Members are entitled to attorneys' fees and costs; and
22 s. Whether Class Members are entitled to interest.

23 **C. Typicality**

24 51. The claims of Plaintiff are typical of the claims of the Class. Plaintiff and Class
25 Members sustained injuries and damages arising out of and caused by Defendants' common
26 course of conduct in violation of laws and regulations that have the force and effect of law and
27 statutes, as alleged herein.

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D. Adequacy of Representation

52. Plaintiff will fairly and adequately represent and protect the interests of the Class. Counsel who represent Plaintiff and Class Members are competent and experienced in litigating wage and hour class and representative actions, and have the financial resources to litigate the claims at issue.

E. Superiority of Class Action

53. 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' illegal policy and/or practice of failing to pay minimum and/or overtime wages, failing to provide compliant duty-free meal periods and/or pay premiums owed thereon, failing to authorize and permit compliant duty-free rest breaks and/or pay premiums owed thereon, failing to maintain and provide accurate itemized wage statements, failing to reimburse for necessary business expenses incurred, failing to pay all wages owed in a timely manner, failing to pay all wages due upon termination and/or resignation, and engaging in unfair business practices.

54. Class action treatment will allow those similarly situated persons to litigate their claims in a 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.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

Cal. Labor Code §§ 1194, 1194.2, 1197, 1197.1, and the Relevant IWC Wage Orders

[On Behalf of Plaintiff and the Class against All Defendants]

55. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by reference all of the allegations contained in the preceding paragraphs of this Complaint as though fully alleged herein.

58. Finally, Defendants did to fully compensate Plaintiff and Class Members for “non-productive” time (i.e., non-sales activity).

19 SECOND CAUSE OF ACTION

21 **Cal. Labor Code §§ 510 and 1198 and the Relevant IWC Wage Orders**

23 60. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
24 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
25 fully set forth herein.

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workday and any work in excess of forty hours 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.”

62. Pursuant to the relevant IWC Wage Order(s), an employee shall not be employed more than eight (8) hours in any workday and/or more than forty (40) hours in any workweek unless the employee receives one and one-half (1 ½) times such employee’s regular rate of pay for all hours worked over eight (8) hours in any workday and/or more than forty (40) hours in any workweek. Further, an employer must compensate an employee at no less than twice the employee’s regular rate of pay when the employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work.

63. At all times mentioned, Plaintiff and the Class regularly worked shifts that consisted of more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek and were not paid proper overtime wages for all overtime hours worked as a result of, but not limited to, Defendants’ failure to pay for work performed off the clock, including pre- and post-shift, and during meal periods, as well as Defendants’ failure to compensate Plaintiff and Class Members for “non-productive” time. Defendant’s practice of rounding Plaintiff’s and Class Members’ work time also resulted in the undercounting and ultimately underpayment of all overtime hours worked. Moreover, the overtime that was paid was short as Defendants incorrectly calculated the regular rate for purposes of calculating overtime; Defendants failed to include non-discretionary forms of pay in the regular rate calculations for Plaintiff and Class Members.

64. Accordingly, by requiring Plaintiff and the Class to work in excess of eight (8) hours per day and/or forty (40) hours per week without properly compensating them overtime wages, as described above, Defendants willfully violated the provisions of Labor Code section 1194.

65. As a result of the unlawful acts of Defendants, Plaintiff and the Class have been deprived of overtime wages in amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, costs, and attorneys’ fees.

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1 **THIRD CAUSE OF ACTION**

2 **FAILURE TO PROVIDE MEAL PERIODS**

3 **Cal. Labor Code §§ 226.7, 512, and the Relevant IWC Wage Orders**

4 **[On Behalf of Plaintiff and the Class against All Defendants]**

5 66. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
6 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
7 fully alleged herein.

8 67. Labor Code section 226.7 provides “an employer shall not require an employee to
9 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or
10 applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”).”
11 Similarly, Labor Code section 512 and the IWC Wage Orders require employers to provide
12 employees with thirty (30) minute uninterrupted and duty-free meal periods within the first five
13 (5) hours of work. *See Brinker Rest. Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1042
14 (“Accordingly, first meal periods must start after no more than five hours.”) Moreover, an
15 employee who works more than ten (10) hours per day is entitled to receive a second thirty (30)
16 minute uninterrupted and duty-free meal period. *See* Labor Code § 512.

17 68. Despite these legal requirements, Defendants failed to always provide meal periods
18 that comply with Labor Code sections 226.7, 512, and IWC Wage Order Nos. 4-2001 and 7-2001.
19 Plaintiff and Class Members experienced short, untimely and interrupted meal periods, and on
20 occasion, the demands of employee job duties were such that they were prevented from taking a
21 meal period altogether. Having been thus subjected to late, short, interrupted, and missed meal
22 periods, Plaintiff and Class Members did not receive their statutorily mandated meal periods.

23 69. To the extent Defendants claim that Plaintiff and Class Members waived their
24 rights to second meal periods for shifts worked in excess of ten (10) hours, the waivers are not
25 applicable to those occasions when Plaintiff and Class Members worked shifts in excess of twelve
26 (12) hours a day and/or to the extent the waivers are ineffective on-duty meal period agreements
27 where the nature of the work does not prevent them from being relieved of all duties.

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9 **FOURTH CAUSE OF ACTION**

10 **FAILURE TO AUTHORIZE AND PERMIT REST BREAKS**

11 **Cal. Labor Code § 226.7 and the Relevant IWC Wage Orders**

12 **[On Behalf of Plaintiff and the Class against All Defendants]**

73. Under the applicable IWC Wage Order(s), an employer must authorize and permit all employees to take ten (10) minute duty free rest breaks for every major fraction of four hours worked. Labor Code section 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.”

74. Defendants are required by California law to authorize and permit breaks of ten (10) uninterrupted minutes for each four hours of work or major fraction thereof (*i.e.*, more than two hours). That is, the required number of rest breaks is equal to the number of work hours divided by four, and if the work time is not evenly divisible by four, any remainder of two hours or less is rounded down and that which exceeds two hours is rounded up. For example, if a Class Member's work time is six hours and ten minutes, he or she is entitled to two rest breaks. If the work time is nine hours, the employee is still entitled to only two rest breaks. (There is an

1 exception: if the shift is under three and one-half hours, no rest break is required.) Each failure to
2 authorize rest breaks as so required is itself a violation of California’s rest break laws.

3 75. Despite these legal requirements, Defendants failed to authorize and permit
4 Plaintiff and Class Members to take timely, duty-free rest breaks. Plaintiff and Class Members
5 were subject to policies and/or practices that prevented them from taking legally compliant rest
6 breaks. Defendants did not relieve Plaintiff and Class Members of all duties during their rest
7 breaks and occasionally required them to be available to continue working—or, in fact, interrupted
8 them—during their rest breaks. Notwithstanding any formal written policy to the contrary,
9 Defendants’ actual custom and business practice was to undermine any formal policy of
10 permitting rest breaks by pressuring Class Members to perform their duties in a way that omitted
11 breaks, including, but not limited to, scheduling a heavy workload that made taking breaks
12 extremely difficult, maintaining an informal anti-rest break policy enforced through ridicule or
13 reprimand, and exerting coercion against the taking of, creating incentives to forego, or otherwise
14 encouraging the skipping of legally protected breaks. Here, as a companywide practice and in fact,
15 Defendants did not offer Plaintiff and Class Members the opportunity to receive compliant off-
16 duty rest breaks and, thus, “the court may not conclude employees voluntarily chose to
17 skip...breaks.” *Alberts v. Aurora Behavioral Health Care* (2015) 241 Cal.App.4th 388, 410 (“[i]f
18 an employer fails to provide legally compliant meal or rest breaks, the court may not conclude
19 employees voluntarily chose to skip those breaks.”); *accord, Brinker, supra*, 53 Cal.4th at p. 1033
20 (“No issue of waiver ever arises for a rest break that was required by law but never authorized; if a
21 break is not authorized, an employee has no opportunity to decline to take it.”)

22 76. In *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, the court
23 expressly rejected the employer’s assertion that it could provide an on-duty rest break to
24 employees who worked as security guards and further explained “that employers [must] relinquish
25 any control over how employees spend their break time, and relieve their employees of all duties.”
26 *Id.* at 273. However, Defendants did not relieve Plaintiff and Class Members of all duties and
27 relinquish control over how Plaintiff and Class Members spend their time.

28 ///

78. As a result, Defendants are liable to Plaintiff and Class Members for one (1) hour of additional of pay at their regular rates of pay for each workday when a compliant rest break was not provided, in a sum to be proven at trial.

9 **FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS**

11 [On Behalf of Plaintiff and the Class against All Defendants]

12 77. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
13 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
14 fully alleged herein.

78. Labor Code section 226(a) requires employers, semi-monthly or at the time or each
payment of wages, to furnish employees an accurate itemized statement in writing showing:

- | | | |
|----|-----|---|
| 17 | (1) | gross wages earned; |
| 18 | (2) | total hours worked by the employee; |
| 19 | (3) | the number of piece-rate units earned and any applicable piece rate if the |
| 20 | | employee is paid on a piece rate; |
| 21 | (4) | all deductions, provided that all deductions made on written orders of the |
| 22 | | employee may be aggregated and shown as one item; |
| 23 | (5) | net wages earned; |
| 24 | (6) | the inclusive dates of the period for which the employee is paid; |
| 25 | (7) | the name of the employee and only the last four digits of his or her social |
| 26 | | security number or an employee identification number other than a social security number; |
| 27 | (8) | the name and address of the legal entity that is the employer...; and |

1 (9) all applicable hourly rates in effect during the pay period and the
2 corresponding number of hours worked at each hourly rate by the employee....

3 79. During the relevant time period, due to Defendants', *inter alia*, failure to provide
4 Plaintiff and Class Members with lawful meal periods and rest breaks (or pay meal and rest break
5 premiums at the regular rates of pay thereon), along with the failure to pay minimum and overtime
6 wages, the wage statements issued by Defendants, at a minimum, do not indicate the correct
7 amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the
8 applicable and/or correct hourly rates in effect during the pay period and the corresponding
9 number of hours worked at each hourly rate in violation of Labor Code section 226(a)(1), (2), (5),
10 and (9).

11 80. In addition to these nine different categories of information that must be included
12 on all wage statements enumerated above, pursuant to Labor Code section 226.2 Class Members'
13 itemized statements must separately state: (a) the total hours of compensable rest and recovery
14 periods, the rate of compensation, and the gross wages paid for those periods during the pay
15 period; and (b) the total hours of other non-productive time, the rate of compensation, and the
16 gross wages paid for that time during the pay period. Defendants failed to provide itemized wage
17 statements to Plaintiff and Class Members in compliance with Labor Code section 226.2.

18 81. An employee suffering injury as a result of a knowing and intentional failure by an
19 employer to comply with Labor Code section 226(a) is entitled to recover the greater of all actual
20 damages or fifty dollars (\$50.00) for the initial pay period in which a violation occurs and one
21 hundred dollars (\$100.00) per employee for each violation in a subsequent pay period, not
22 exceeding an aggregate penalty of four thousand dollars (\$4,000.00), and is entitled to an award of
23 costs and reasonable attorneys' fees.

24 82. The absence of accurate information on their wage statements has delayed
25 challenge to Defendants' unlawful pay practices, requires discovery and mathematical
26 computations to determine the amount of wages owed, causes difficulty and expense in attempting
27 to reconstruct time and pay records, and led to submission of inaccurate information about wages
28 and amounts deducted from wages to state and federal governmental agencies. Plaintiff would not

1 have had to engage in these efforts and incur these costs had Defendants provided accurate wage
2 statements. This also delayed Plaintiff's ability to demand and recover the underpayment of wages
3 from Defendants.

4 83. Thus, Plaintiff and Class Members have been injured by Defendants' violation of
5 Labor Code section 226(a) because they were denied both their legal right to receive, and their
6 protected interest in receiving, accurate itemized wage statements.

7 84. Plaintiff and Class Members are thus entitled to recover from Defendants the
8 greater of their actual damages caused by Defendants' failure to comply with Labor Code section
9 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000.00) per employee
10 pursuant to Labor Code section 226(e), and any other allowable penalties including those pursuant
11 to Labor Code section 226.3.

12 **SIXTH CAUSE OF ACTION**

13 **FAILURE TO PAY ALL WAGES WITHIN A TIMELY MANNER**

14 **AND UPON SEPARATION OF EMPLOYMENT**

15 **Cal. Labor Code §§ 201, 202, 203, 204, and 210**

16 **[On Behalf of Plaintiff and the Class against All Defendants]**

17 85. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
18 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
19 fully alleged herein.

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

26 87. Labor Code section 203 provides that if an employer willfully fails to pay
27 compensation promptly upon discharge or resignation, as required by sections 201 and 202, then
28 the employer is liable for penalties in the form of continued compensation up to thirty (30) days.

1 88. As alleged herein and above, Defendants' failure to pay wages was willful in that
2 Defendants knew wages (*e.g.*, for off-the-clock work, unpaid premiums) were owed to Plaintiff
3 and Class Members, but failed to pay said wages, at the time of termination, or within 72 hours of
4 resignation, thus entitling Plaintiff and Class Members to penalties under Labor Code section 203,
5 which provides that an employee's wages shall continue as a penalty until paid for a period of up
6 to thirty (30) days from the time they were due.

7 89. Labor Code section 204 requires that all wages earned by any person in any
8 employment between the 1st and 15th day, inclusive, of any calendar month, other than those
9 wages due upon termination of an employee, are due and payable between the 16th and the 26th
10 day of the month during which the labor was performed, and that all wages earned by any person
11 in any employment between the 16th and the last day, inclusive, of any calendar month, other than
12 those wages due upon termination of an employee, are due and payable between the 1st and 10th
13 day of the following month. Section 204 also requires that all wages earned for labor in excess of
14 the normal work period shall be paid no later than the payday for the next regular payroll period.

15 90. The requirements of Labor Code section 204 shall be deemed satisfied by the
16 payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more
17 than seven calendar days following the close of the payroll period when the wages were earned.

18 91. During the relevant time period, Defendants failed to pay Plaintiff and Class
19 Members all wages due to them within the time period specified by Labor Code section 204
20 including, but not limited to, unpaid minimum and overtime wages, along with unpaid meal and
21 rest break premiums.

22 92. Labor Code section 210 imposes upon Defendants a penalty of \$100.00 for each
23 violation of failing to pay the wages of each employee. Furthermore, Labor Code section 210
24 imposes upon Defendants for each subsequent violation, or any willful or intentional violation, of
25 failure to pay the wages of each employee a penalty of \$200.00, plus 25 percent of the amount
26 unlawfully withheld.

27 93. Pursuant to Labor Code sections 218.5 and 218.6, along with California Civil Code
28 sections 3287(b) and 3289, Plaintiff requests that the Court award reasonable attorneys' fees and

1 the costs incurred by him in this action, along with pre-judgment interest on all amounts recovered
2 herein, as well as any statutory penalties Defendants may owe under the California Labor Code
3 and/or any other statute.

4 **SEVENTH CAUSE OF ACTION**

5 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**

6 **Cal. Labor Code §§ 2800 and 2802**

7 **[On Behalf of Plaintiff and the Class against All Defendants]**

8 94. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
9 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
10 fully alleged herein.

11 95. Labor Code section 2802 provides that an employer shall indemnify his or her
12 employee for all necessary expenditures or losses incurred by the employee in direct consequence
13 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
14 even though unlawful, unless the employee, at the time of obeying the directions, believed them to
15 be unlawful.

16 96. Defendants required Plaintiff and Class Members to use their personal cell phones
17 for business-related purposes. These activities included but were not limited to responding to
18 customer inquiries by cell phone and text messages. Additionally, Defendants' managers and other
19 Class Members routinely communicated with Plaintiff and the other Class Members for business-
20 related matters by calling them on their personal cell phones and/or sending text messages to their
21 personal cell phones. These losses were incurred as a direct consequence of Plaintiff's and Class
22 Members' duties and at the direction of Defendants.

23 97. Although Plaintiff and Class Members were regularly required to use their own
24 personal cell phones for work purposes, Plaintiff and Class Members were not provided
25 reimbursement for the cost and use of their personal cell phones. California law prohibits an
26 employer from failing to reimburse employees from losses incurred through the use of their own
27 personal cell phones even if the use would not cause the employee to exceed their data limit.

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1 **EIGHTH CAUSE OF ACTION**

2 **VIOLATION OF LABOR CODE § 1174(d)**

3 **[On Behalf of Plaintiff and the Class against All Defendants]**

4 98. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
5 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
6 fully alleged herein.

7 99. Pursuant to Labor Code section 1174(d), an employer shall keep, at a central
8 location in the state or at the plants or establishments at which employees are employed, payroll
9 records showing the hours worked daily by and the wages paid to employees employed at the
10 respective plants or establishments. These records shall be kept in accordance with rules
11 established for this purpose by the commission, but in any case, shall be kept on file for not less
12 than three years.

13 100. Defendants have intentionally and willfully failed to keep accurate and complete
14 payroll records showing the hours worked daily by and the wages paid to Plaintiff and Class
15 Members.

16 101. As a result of Defendants' violation of Labor Code section 1174(d), Plaintiff and
17 Class Members have suffered injury and damage to their statutorily protected rights.

18 102. More specifically, Plaintiff and Class Members have been injured by Defendants'
19 intentional and willful violation of Labor Code section 1174(d) because they were denied both
20 their legal right and protected interest in having available, accurate, and complete payroll records
21 pursuant to Labor Code section 1174(d).

22 **NINTH CAUSE OF ACTION**

23 **UNFAIR COMPETITION LAW VIOLATIONS**

24 **Cal. Business & Professions Code §§ 17200, *et seq.***

25 **[On Behalf of Plaintiff and the Class against All Defendants]**

26 103. Plaintiff, on behalf of himself and the Class, re-alleges and incorporates by
27 reference all of the allegations contained in the preceding paragraphs of this Complaint as though
28 fully set forth herein.

1 104. The Unfair Competition Law (“UCL”), California Business & Professions Code
2 sections 17200, *et seq.*, prohibits any unlawful, unfair, or fraudulent business practices. Business
3 & Professions Code section 17204 allows “any person who has suffered injury in fact and has lost
4 money or property” to prosecute a civil action for violation of the UCL. Such a person may bring
5 such an action on behalf of himself or herself and others similarly situated who are affected by the
6 unlawful, unfair, or fraudulent business practice.

7 105. The statute of limitations for a claim under the UCL is four years. Accordingly, the
8 actionable period for this cause of action is four years prior to the filing of this Complaint through
9 the present, and on-going until the violations are corrected and/or the Class is certified.

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

15 107. A violation of Business and Professions Code sections 17200, *et seq.* may be
16 predicated upon the violation of any state or federal law. Defendants’ policies and/or practices
17 have violated state law in at least the following respects:

18 (a) Requiring Plaintiff and Class Members to work without paying them the
19 minimum wage for all hours worked in violation of Labor Code sections 1194, 1194.2, 1197, and
20 the applicable IWC Wage Order(s);

21 (b) Requiring Plaintiff and Class Members to work overtime without paying
22 them the proper compensation in violation of Labor Code sections 510, 1198, and the applicable
23 IWC Wage Order(s);

24 (c) Failing to provide compliant duty-free meal periods to Plaintiff and Class
25 Members and failing to authorize and permit compliant duty-free rest breaks to Plaintiff and Class
26 Members in violation of Labor Code sections 226.7, 512, and the applicable IWC Wage Order(s);

27 (d) Failing to reimburse Plaintiff and Class Members for necessary business
28 expenses incurred in performing their job duties, in violation of Labor Code section 2802;

1 (e) Failing to timely pay all wages to Plaintiff and Class Members during their
2 employment and upon separation of employment, in violation of Labor Code sections 201, 202,
3 203, 204, and 210; and

4 (f) Failing to maintain and provide Plaintiff and Class Members with accurate
5 itemized wage statements, in violation of Labor Code sections 226(a) and 226.2.

6 Thus, Defendants engaged in unlawful competition in violation of sections 17200, *et seq.*
7 of the California Business & Professions Code by violating, *inter alia*, sections 201, 202, 203,
8 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1174.5, 1194, 1194.2, 1197, 1197.1, 1198,
9 2800, and 2802 of the Labor Code and the applicable IWC Wage Order(s).

10 108. As a direct and proximate result of Defendants' unlawful business practices,
11 Plaintiff and Class Members have suffered economic injuries because Defendants' conduct has
12 damaged Plaintiff and Class Members by, *inter alia*, wrongfully denying them all wages,
13 including minimum and overtime wages, failing to pay all meal and rest breaks premiums at the
14 regular rate of pay, and neglecting to reimburse for necessary business expenses, along with the
15 corresponding interest, in a timely manner and upon separation, and while supplying them
16 inaccurate and misleading wage statements. Such conduct is substantially injurious to Plaintiff and
17 Class Members.

18 109. Additionally, Defendants intentionally avoided paying Plaintiff and Class Members
19 wages and monies, thereby creating for Defendants an artificially lower cost of doing business in
20 order to undercut their competitors and establish a greater foothold in the marketplace. Through
21 their actions alleged herein, Defendants have engaged in unfair competition within the meaning of
22 section 17200 of the California Business & Professions Code.

23 110. Defendants have profited from their unlawful, unfair, and/or fraudulent acts and
24 practices. Plaintiff and Class Members are entitled to monetary relief pursuant to the California
25 Business & Professions Code sections 17203 and 17208 from at least four years prior to the filing
26 of this Complaint through the date of such restitution, at rates specified by law. Defendants should
27 be required to disgorge all the profits and gains they have reaped and restore such profits and gains
28 to Plaintiff and Class Members, from whom they were unlawfully taken.

1 111. Defendants' course of conduct, acts, and practices in violation of the California
2 laws mentioned above constitute independent violations of sections 17200, *et seq.* of the
3 California Business & Professions Code.

4 112. Plaintiff and Class Members are entitled to enforce all applicable penalty
5 provisions of the California Labor Code pursuant to California Business & Professions Code
6 section 17202.

7 113. Plaintiff has assumed the responsibility of enforcement of the laws and public
8 policies specified herein by suing on behalf of himself and Class Members previously or presently
9 employed by Defendants in California. Plaintiff's success in this action will enforce important
10 rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in
11 the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate
12 pursuant to Code of Civil Procedure section 1021.5.

13 **TENTH CAUSE OF ACTION**

14 **PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF 2004**

15 **Cal. Labor Code §§ 2698, *et seq.***

16 **[On Behalf of Plaintiff and Aggrieved Employees against All Defendants]**

17 114. Plaintiff, on behalf of himself and Aggrieved Employees, re-alleges and
18 incorporates by reference all of the allegations contained in the previous paragraphs of this
19 Complaint as though fully set forth herein.

20 115. Plaintiff, on behalf of himself and Aggrieved Employees, bring this representative
21 action against Defendants to recover wages and penalties pursuant to the Private Attorneys
22 General Act of 2004 ("PAGA"), Labor Code sections 2698, *et seq.*

23 116. Based on the above allegations incorporated by reference, Defendants have violated
24 Labor Code sections 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1174, 1174.5,
25 1194, 1194.2, 1197, 1197.1, 1198, 2800, and 2802 as well as the applicable IWC Wage Order(s).

26 117. Under Labor Code sections 2699(f)(2) and 2699.5, Plaintiff and Aggrieved
27 Employees are entitled to penalties in an amount to be shown at the time of trial subject to the
28 following formula:

1 \$100 for the initial violation per employee per pay period; and
2 \$200 for each subsequent violation per employee per pay period.
3 These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five
4 percent (25%) to the affected employees.

5 118. Defendants failed to provide Plaintiff and Aggrieved Employees with accurate
6 itemized wage statements in compliance with Labor Code section 226(a). Plaintiff seeks separate
7 PAGA penalties for Defendants' violations of Labor Code section 226(a) and (e). *Lopez v. Friant*
8 & Assocs., LLC (2017) 15 Cal.App.5th 773, 788; *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11,
9 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant*
10 that "[t]o the extent the Court's Order [granting summary judgment to *Home Depot*] was
11 ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative
12 claim for [PAGA] penalties under section 226(e)...the Court's Order should not be read to grant
13 summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section
14 226(a)."]]. For violations of Labor Code section 226(a), Plaintiff seeks the default penalty
15 provided by Labor Code section 226.3. Labor Code section 226.3 provides that "[a]ny employer
16 who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two
17 hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand
18 dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer
19 fails to provide the employee a wage deduction statement or fails to keep the required records in
20 subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law
21 Plaintiff and Aggrieved Employees are entitled to recover penalties for violations of Labor Code
22 section 226.3 and seek default PAGA penalties for each of Defendants' numerous violations of
23 Labor Code section 226(a).

24 119. Labor Code section 210 provides that "[i]n addition to, an entirely independent and
25 apart from, any other penalty provided in this article, every person who fails to pay the wages of
26 each employee as provided in Sections...204...shall be subject to a civil penalty as follows: (1)
27 [f]or any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
28 [f]or each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)

1 for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.” As a
2 result of the faulty compensation policies and/or practices, Plaintiff and Aggrieved Employees are
3 also entitled to recover penalties under Labor Code section 210 through PAGA.

4 120. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
5 liquidated damages, in the amount of: “(1) [f]or any initial violation that is intentionally
6 committed, one hundred dollars (\$100) for each underpaid employee for each pay period for
7 which the employee is underpaid...[and] (2) [f]or each subsequent violation for the same specific
8 offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for
9 which the employee is underpaid regardless of whether the initial violation is intentionally
10 committed.” Accordingly, through PAGA and to the extent permitted by law, Plaintiff and
11 Aggrieved Employees are entitled to recover pursuant to Labor Code section 1197.1.

12 121. Plaintiff has fully and completely exhausted his administrative remedies under
13 PAGA prior to proceeding with the PAGA claim. On October 23, 2020, Plaintiff filed his PAGA
14 Notice online with the LWDA and sent a letter by certified mail to Defendants setting forth the
15 facts and theories of the violations alleged against Defendants, as prescribed by Labor Code
16 sections 2698, *et seq.* As required by PAGA, Plaintiff submitted the filing fee with the LWDA.
17 Pursuant to Labor Code section 2699.3(a)(2)(A), no notice was received by Plaintiff from the
18 LWDA evidencing its intention to investigate within sixty-five (65) calendar days of the postmark
19 date of the PAGA notice. Plaintiff is therefore entitled to commence and proceed with a civil
20 action pursuant to Labor Code section 2699.

21 122. Plaintiff, as a personal representative of the general public, on behalf of Aggrieved
22 Employees and the State of California, will and does seek to recover any and all penalties for each
23 and every violation shown to exist or to have occurred during the PAGA period, in an amount
24 according to proof, as to those penalties that are otherwise only available to public agency
25 enforcement actions. Funds recovered will be distributed in accordance with the PAGA, with 75
26 percent of the penalties recovered being reimbursed to the State of California and the LWDA.

27 123. Plaintiff was compelled to retain the services of counsel to file this action to protect
28 his interests and those of Aggrieved Employees, and to assess and collect the wages and penalties

owed by Defendants. Plaintiff has thereby incurred attorneys' fees and costs, which he is entitled to recover under Labor Code section 2699(g)(1).

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for the following relief:

1. For an order certifying this action as a class action;
2. For compensatory damages in the amount of the unpaid minimum wage and overtime compensation for work performed by Plaintiff and Class Members, as may be proven;
3. For liquidated damages in the amount equal to the unpaid minimum wage and interest thereon, as may be proven;
4. For compensatory damages in the amount of the regular rate of pay made by Plaintiff and Class Members for each noncompliant meal period for which premium pay was deficient, as may be proven;
5. For compensatory damages in the amount of the regular rate of pay made by Plaintiff and Class Members for each day of noncompliant rest breaks for which premium pay was deficient, as may be proven;
6. For penalties pursuant to Labor Code section 203 for Plaintiff and Class Members who quit or were fired in an amount equal to their daily wage multiplied by thirty (30) days, as may be proven;
7. For actual damages and/or penalties pursuant to Labor Code section 226(e) for Plaintiff and Class Members, as may be proven;
8. For reimbursement of business expenditures, as may be proven;
9. For restitution for unfair competition pursuant to the California Business & Professions Code sections 17200, *et seq.*, including disgorgement of profits, as may be proven;
10. For a civil penalty in the amount of \$100.00 for the initial violation and \$200.00 for each subsequent violation as specified in section 2699(f)(2) of the Labor Code in the representative action brought on behalf of Plaintiff and Aggrieved Employees pursuant to the Private Attorneys General Act of 2004;

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11. For all civil penalties available under section 210 of the Labor Code and the Private Attorneys General Act of 2004;

12. For all civil penalties available under section 226.3 of the Labor Code and the Private Attorneys General Act of 2004;

13. For all civil penalties available under section 1174.5 of the Labor Code and the Private Attorneys General Act of 2004;

14. For all civil penalties available under section 1197.1 of the Labor Code and the Private Attorneys General Act of 2004;

15. For an order enjoining Defendants and their agents, servants, and employees, and all persons acting under, in concert with, or for them, from acting in derogation of any rights or duties adumbrated in this complaint;

16. For an award of pre-judgment and post-judgment interest;

17. For an award providing for the payment of the costs of this suit;

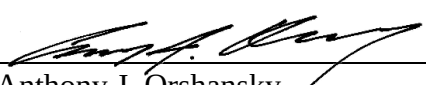
18. For an award of attorneys' fees, to the extent provided by law; and

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

Dated: November 23, 2021

Respectfully submitted,

COUNSELONE, PC

By 
Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiff hereby demands trial of his claims by jury to the extent authorized by law.

Respectfully submitted,

Dated: November 23, 2021

COUNSELONE, PC

By


Anthony J. Orshansky
Jennifer L. Connor
Justin Kachadoorian
Attorneys for Plaintiff, putative Class
Members, and Aggrieved Employees