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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

DANIEL LARA DIAZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

SHAMROCK FOODS CO., an Arizona
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: **RIC2004126**

COMPLAINT

CLASS ACTION CLAIMS

- (1) Failure to Pay Minimum Wages;
- (2) Failure to Pay Overtime Wages;
- (3) Failure to Provide Meal Periods;
- (4) Failure to Provide Rest Breaks;
- (5) Failure to Timely Pay Final Wages;
- (6) Failure to Provide Accurate Itemized Wage Statements;
- (7) Unfair and Unlawful Competition;

PAGA CLAIMS

- (8) Failure to Pay Minimum Wages;
- (9) Failure to Pay Overtime Wages;
- (10) Failure to Provide Meal Periods;
- (11) Failure to Provide Rest Breaks;
- (12) Failure to Timely Pay Wages Each Period;
- (13) Failure to Timely Pay Final Wages; and
- (14) Failure to Provide Accurate Itemized Wage Statements

JURY TRIAL DEMANDED

Plaintiff Daniel Lara Diaz ("Plaintiff") on behalf of himself, on a representative basis,
and on behalf of others similarly situated, complains and alleges as follows.

1 **I. INTRODUCTION AND GENERAL ALLEGATIONS**

2 1. Plaintiff brings this action against his former employer, Defendants Shamrock
3 Foods Co., and DOES 1 through 20, inclusive, (collectively, the “Defendants”) on behalf of
4 himself and all other current and non-exempt employees who were employed by Defendants in
5 California within the last four years (the “Represented Employees”), for Defendants’ violations
6 of the California Labor Code stemming from Defendants’ failure to pay all wages owed,
7 including minimum and regular wages, failure to pay overtime wages, failure to provide
8 mandated meal periods and rest breaks, failure to timely pay wages, and failure to provide
9 accurate itemized wage statements, among other claims.

10 2. Plaintiff was employed by Defendants from approximately October 2018 through
11 September 28, 2020 as a non-exempt shipping clerk.

12 3. Plaintiff alleges on information and belief that the Represented Employees were
13 subjected to the same policies, working conditions, and corresponding wage and hour violations
14 to which Plaintiff was subjected during his employment.

15 4. Plaintiff and the Represented Employees were not provided proper minimum and
16 regular wages owed due to Defendants’ failure to accurately record and compensate for all hours
17 worked. As one specific example, Plaintiff and Represented Employees were required to
18 undergo temperature checks when entering the facility at the beginning of their shifts and upon
19 reentering after breaks. However, despite that Plaintiff and the Represented Employees were
20 subject to Defendants’ control while waiting to go through the screening process, Defendants did
21 not provide any compensation for the time that it took to undergo the temperature checks. These
22 exact issues were found unlawful in the California Supreme Court’s landmark decision of
23 *Troester v. Starbucks Corporation* (2018) 5 Cal.5th 829 (California law “do[es] not allow
24 employers to require employees to routinely work for minutes off the clock without
25 compensation”). This practice, among others, resulted in unpaid minimum and overtime wages.

26 5. Also, at all relevant times, Plaintiff and the Represented Employees were denied
27 30-minute off-duty meal periods, as mandated by California law, during their employment with
28 Defendants. As a result of Defendants’ policies and practices, Plaintiff and the Represented

1 Employees were subjected to meal period violations when they were: (1) unable to take meal
2 periods due to workload, (2) forced to take on-duty meal period while under the control of
3 Defendants, (3) forced to take meal periods, if such a meal occurred, after the 5th hour of work,
4 and (4) not provided a mandated second meal period for shifts in excess of 10 hours.

5 6. Defendants also failed to provide Plaintiff and the Represented Employees with
6 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
7 mandated by California law. Defendants did not schedule rest breaks and the Represented
8 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
9 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
10 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
11 and/or permit a third mandated rest break.

12 7. Plaintiff also alleges that he and the Represented Employees were not paid all
13 wages due and owing each pay period (Labor Code § 204) and upon separation of employment
14 within the time required by Labor Code §§ 201 – 203. Plaintiff further alleges that Defendants
15 engaged in the practice of failing to pay all wages due and owing to Plaintiff and the Represented
16 Employees at the time their employment ended with Defendants, including, but not limited to
17 minimum wages, regular wages, wage premiums, among others.

18 8. Plaintiff further alleges that Defendants failed to provide accurate itemized wage
19 statements that fully complied with the requirements of Labor Code § 226(a).

20 9. Plaintiff alleges that Defendants' violations of the wage and hour components of
21 the Labor Code and IWC Wage Orders enabled it to decrease expenses and to increase its level
22 of productivity and profits, thereby allowing Defendants to gain an unfair advantage over its
23 competitors.

24 10. At all material times, Defendants and DOES 1 through 20 were and/or are
25 Represented Employees' employers or persons acting on behalf of Represented Employees'
26 employer, within the meaning of California Labor Code § 558, who violated or caused to be
27 violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating
28 hours and days of work in any Order of the Industrial Welfare Commission and, as such, are

1 subject to penalties for each underpaid employee as set forth in Labor Code § 558 and under
2 California law.

3 11. Plaintiff brings this lawsuit seeking declaratory, injunctive, equitable, and
4 monetary relief against Defendants and each of them, on behalf of himself and the Represented
5 Employees to recover, among other things, unpaid wages and benefits, interest, attorneys' fees,
6 penalties, costs and expenses pursuant to California Labor Code §§ 200, 201, 202, 203, 218.6,
7 221, 223, 226, 226.3, 226.7, 512, 558, 1194, and 1194.2, among possibly other sections
8 inadvertently omitted. Plaintiff also reserves the right to name additional representatives
9 throughout the State of California.

10 **II. JURISDICTION**

11 12. This Court has jurisdiction over the claims for relief of Plaintiff and the
12 Represented Employees pursuant to the Labor Code and the IWC Wage Orders.

13 **III. VENUE**

14 13. Venue as to each Defendant is proper in this Court pursuant to Code of Civil
15 Procedure §§ 395(a) and 395.5. Defendants transact business in Riverside County and the
16 unlawful acts alleged herein have a direct effect on Plaintiff and the Represented Employees in
17 Riverside County. Furthermore, Defendants employed or employ Plaintiff and Represented
18 Employees in Riverside County.

19 **IV. PARTIES**

20 **Plaintiff**

21 14. Plaintiff and Class Representative Daniel Lara Diaz was employed by Defendants
22 from approximately October 2018 through September 28, 2020 and performed work for
23 Defendants in Riverside County.

24 **Defendants**

25 15. Plaintiff is informed and believes and thereon alleges that Defendant Shamrock
26 Foods Co. is an Arizona corporation authorized to and doing business in Riverside County,
27 California, and is and/or was the legal employer of Plaintiff and the Represented Employees
28 during the applicable statutory periods.

1 16. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
2 participation in the conduct herein alleged, of Defendants sued herein as DOES 1 through 20,
3 inclusive, but on information and belief alleges that those Defendants are legally responsible for
4 the payment of penalties and damages to Plaintiff and all Represented Employees by virtue of
5 Defendants' unlawful actions and practices and therefore sue these Defendants by such fictitious
6 names. Plaintiff will amend this complaint to allege the true names and capacities of the DOE
7 Defendants when ascertained.

8 17. Plaintiff is informed and believes and thereon alleges that he worked under the
9 joint direction and control of Defendants and that Defendants, and each of them, acted in all
10 respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme,
11 business plan or policy in all respect pertinent hereto, and the acts of each Defendant are legally
12 attributable to the other Defendants. On information and belief, a unity of interest and ownership
13 between each Defendant exists such that all Defendants acted as a single employer of Plaintiff
14 and other similarly situated employees.

15 18. Plaintiff is informed and believes and thereon alleges that, in conducting
16 themselves in the manner described herein, Defendants, and each of them, were acting in active
17 concert with one another such that the acts of each were and are fully attributable to the others in
18 all material respects. Plaintiff is further informed and believes that at all relevant times
19 Defendants and each of them are now, and at all material times herein mentioned were, the
20 agents, servants, employees, partners, affiliates, and/or representatives of each of their remaining
21 co-Defendants, and were, at all times herein mentioned, acting within the course, scope, and
22 purpose of such relationship(s) and with the knowledge, consent and/or ratification of each of
23 their remaining co-Defendants.

24 19. Furthermore, Plaintiff is informed and believes and thereon alleges that
25 Defendants, and each of them, are an integrated enterprise and should be treated as a single
26 employer because these entities share an interrelation of operations, with common human
27 resources and personnel policies and shared common offices and facilities. Additionally,
28 Defendants also have a shared website, common management, a centralized control of labor

operations, and common ownership or financial control.

20. Pursuant to Labor Code § 2699.3(a), on October 2, 2020, Plaintiff gave written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have been violated, including the facts and theories to support the alleged violations. Plaintiff is currently complying with the procedures for bringing suit specified in California Labor Code § 2699.3, and this Complaint will be deemed amended to include the PAGA allegations enumerated below when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and the LWDA chooses not to investigate the allegations herein.

V. CLASS ACTION ALLEGATIONS

21. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

22. Plaintiff brings this action on behalf of himself and all others similarly situated as a class action, pursuant to Code of Civil Procedure § 382.

23. The relevant time period for this class action is defined as the time period beginning four years prior to the filing of this action until class certification (the “Relevant Time Period”).

24. The Class, also referred to as the “Represented Employees,” that Plaintiff seeks to represent is defined as follows:

California Class

All current and non-exempt employees who were employed by Defendants in California at any time during the Relevant Time Period.

25. Plaintiff also seeks to represent the following subclasses:

Temperature Check Subclass

All Represented Employees who were required to go through a temperature checkpoint during a meal period or at the beginning or end of shift during the Relevant Time

Period.

Meal Break Subclass

All Represented Employees who worked a shift in excess of 5 hours during the Relevant Time Period.

Rest Break Subclass

All Represented Employees who worked a shift of at least 3.5 hours during the Relevant Time Period.

Waiting Time Penalties Subclass

All Represented Employees who separated from their employment with Defendants during the period three years before the filing of this action and ending when final judgment is entered.

Wage Statement Penalties Subclass

All Represented Employees during the period one year before the filing of this action and ending when final judgment is entered.

26. Plaintiff reserves the right to amend or modify the class description with greater specificity or further division into subclasses or limitation to particular issues as appropriate.

27. Plaintiff, as Class Representative, is a member of the class that he seeks to represent.

28. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation and the proposed class is easily ascertainable from Defendants' personnel and payroll records.

29. **Numerosity:** The potential members of the Class as defined are so numerous that a joinder of all Represented Employees is impracticable. Although the exact number is currently unknown to Plaintiff, this information is easily ascertainable from Defendants' payroll and personnel records.

1 30. **Commonality:** There are questions of law and fact common to the class which
2 predominate over any questions affecting only individual members of the class, including
3 without limitation:

4 i. Whether Defendants violated the California Labor Code and IWC Wage
5 Order by failing to pay proper minimum and regular wages to Plaintiff and the Represented
6 Employees for all hours worked;

7 ii. Whether Defendants violated the California Labor Code and IWC Wage
8 Order by failing to pay proper overtime wages to Plaintiff and the Represented Employees for all
9 overtime hours worked;

10 iii. Whether Defendants violated the California Labor Code and applicable
11 IWC Wage Order by failing to provide compliant meal periods to Plaintiff and the Represented
12 Employees and whether Defendants failed to compensate Plaintiff and the Represented
13 Employees with one additional hour of wages at the regular rate of pay for each instance when a
14 compliant meal period was not provided;

15 iv. Whether Defendants violated the California Labor Code and applicable
16 IWC Wage Order by failing to provide paid rest breaks to Plaintiff and the Represented
17 Employees and whether Defendants failed to compensate Plaintiff and the Represented
18 Employees with one additional hour of wages at the regular rate of pay for each instance when a
19 paid rest break was not provided;

20 v. Whether Defendants violated the California Labor Code by failing to
21 timely pay all wages due upon separation of employment between Defendants and Plaintiff and
22 Represented Employees, whether such separation was voluntary or involuntary;

23 vi. Whether Defendants violated the California Labor Code by failing to
24 provide Plaintiff and Represented Employees with complete, accurate, itemized wage statements;

25 vii. Whether Defendants violated California Business & Professions Code §§
26 17200 *et seq.* due to the: failure to pay all wages owed, failure to provide mandated paid rest
27 breaks, failure to provide mandated meal periods, failure to reimburse business expenses, and
28 failure to timely pay final wages; and

viii. Whether Plaintiff and Represented Employees are entitled to equitable relief pursuant to California Business & Professions Code §§ 17200 *et seq.*

31. **Typicality:** Plaintiff's claims, as the Class Representative, are typical of the claims of The Class. Plaintiff, like other members of The Class, was subjected to Defendants' ongoing Labor Code and Wage Order violations including pertaining to the failure to pay all wages owed, failure to provide mandated meal periods, failure to provide mandated paid rest breaks, failure to timely pay final wages, and failure to provide accurate itemized wage statements.

32. **Adequacy of Representation.** Plaintiff, as the Class Representative, will fairly and adequately represent and protect the interests of the Class. Plaintiff's interests are not in conflict with those of the Class. Class Representative's counsel are competent and experienced in litigating large employment class actions and other complex litigation matters, including cases like this case.

33. **Superiority of Class Action.** Class certification is appropriate because a class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Represented Employees 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 Represented Employee has been damaged and is entitled to recovery by reason of Defendants' illegal policies and practices set forth above. 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.

FIRST CAUSE OF ACTION

FAILURE TO PAY MINIMUM WAGES

(Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

Plaintiff, the California Class and the Temperature Check Subclass, Against All Defendants

34. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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1 35. Plaintiff and the Represented Employees were not exempt from the requirement
2 to be paid at least the applicable California minimum wage throughout the statutory period for
3 each hour worked.

4 36. Plaintiff, the California Class and the Temperature Check Subclass were not
5 provided proper minimum and regular wages owed due to Defendants' policies, including those
6 which required its employees to undergo unpaid temperature checks when entering the facility at
7 the beginning of their shifts and upon returning from breaks.

8 37. Consequently, Defendants violated California Labor Code laws and minimum
9 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
10 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

11 38. Thus, Defendants violated California Labor Code laws, *inter alia*, Labor Code §§
12 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090,
13 subds. 1 and 4(B).

14 39. Plaintiff is informed and believes and thereon alleges that Defendants
15 intentionally, willfully, and improperly failed to pay wages to Plaintiff, the California Class and
16 the Temperature Check Subclass for each hour worked in violation of Labor Code §§ 221-223,
17 1194 and 1197.

18 40. Defendants' conduct was willful, as Defendants knew that Plaintiff and the
19 Represented Employees were entitled to be paid wages throughout the statutory period for each
20 hour worked, including proper minimum wages, yet Defendants chose not to pay them in
21 accordance thereto.

22 41. At all material times, Defendants DOES 1 through 20 were and/or are Plaintiff's
23 and the Represented Employees' employers or persons acting on behalf of Plaintiff and the
24 Represented Employees' employer, within the meaning of California Labor Code § 558, who
25 violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2,
26 Chapter 1 of the California Labor Code regulating hours and days of work respectively.

27 42. During employment of Plaintiff and the Represented Employees, Defendants
28 failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

43. As a result of the Defendants' wrongful conduct, Plaintiff and the Represented Employees have been damaged in amounts to be proven at trial.

44. Plaintiff, on behalf of himself and the Represented Employees, seeks recovery of all unpaid minimum wages, liquidated damages, penalties, interest, attorneys' fees and costs of suit, pursuant to Labor Code §§ 1194 and 1194.2, against Defendants in an amount to be proven at trial.

SECOND CAUSE OF ACTION

(Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

Plaintiff, the California Class and the Temperature Check Subclass, Against All Defendants

45. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

46. Plaintiff, the California Class and the Temperature Check Subclass, were employees of Defendants who did not receive proper protections and benefits of the laws governing payment of overtime wages.

47. Labor Code § 204 requires that the employer timely pay all overtime wages to its employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any work performed in excess of eight (8) hours in one workday or in excess of forty (40) 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. Furthermore, any work performed in excess of twelve (12) in one workday shall be compensated at twice the regular rate of pay for an employee.

48. For example, Plaintiff, the California Class and the Temperature Check Subclass were frequently required to undergo temperature checks when entering the facility. However, despite that Plaintiff and the Represented Employees were subject to Defendants' control while waiting to go through these checkpoints, Defendants did not provide any compensation for the time it took to complete the process, leading to a failure to pay proper overtime wages.

49. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage Order § 3(A) every pay period with respect to Plaintiff and the Represented Employees because Defendants required its employees to work hours in excess of 8 and/or 12 per day and/or 40 per

50. Plaintiff is informed and believes and thereon alleges that Defendants intentionally, willfully, and improperly failed to pay proper overtime wages to Plaintiff, the California Class and the Temperature Check Subclass in violation of Labor Code §§ 204, 221-223, 510, 1194 and 1197.

51. Defendants' conduct was willful, as Defendants knew that Plaintiff, the California Class and the Temperature Check Subclass were entitled to be paid proper overtime wages throughout the statutory period, yet Defendants chose not to pay them in accordance thereto.

52. At all material times, Defendants DOES 1 through 10 were and/or are the employer of Plaintiff and the Represented Employees or were persons acting on behalf of said employer(s), within the meaning of California Labor Code § 558, who violated or caused to be violated Labor Code § 204 and a provision or provisions of Part 2, Chapter 1 of the California Labor Code regulating hours and days of work respectively.

53. During the employment of Plaintiff, the California Class and the Temperature Check Subclass, Defendants failed to pay them all wages to which they were entitled, thereby receiving an economic benefit.

54. As a result of Defendants' wrongful conduct, Plaintiff, the California Class and the Temperature Check Subclass have been damaged in amounts to be proven at trial.

55. Plaintiff, on behalf of herself, Plaintiff, the California Class and the Temperature Check Subclass, seeks recovery of all unpaid overtime wages, penalties, interest, attorneys' fees, and costs of suit against Defendants in an amount to be proven at trial.

THIRD CAUSE OF ACTION

FAILURE TO PROVIDE MEAL PERIODS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Meal Period Subclass, Against All Defendants

56. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

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1 57. Plaintiff and the Represented Employees are and/or were employees of
2 Defendants who did not receive proper protections and benefits of the laws governing mandatory
3 meal periods.

4 58. Labor Code § 226.7 requires employers, including Defendants, to provide
5 employees with meal periods as mandated by the Industrial Welfare Commission.

6 59. Labor Code § 512(a), in part, provides that employers, including Defendants, may
7 not employ an employee for a work period of more than five hours per day without providing an
8 employee the opportunity to take an uninterrupted meal period of not less than 30 minutes,
9 except that if the total work period per day of the employee is no more than six hours, the meal
10 period may be waived by mutual consent of both the employer and the employee. Employers
11 may not employ an employee for a work period more than 10 hours per day without providing
12 the employee with a second meal period of not less than 30 minutes.

13 60. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B),
14 Defendants shall pay an employee one additional hour of pay at the employee's regular rate of
15 pay for each meal period that is missed.

16 61. At all relevant times herein, Plaintiff and the Represented Employees were denied
17 the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and
18 practices, Plaintiff and the Represented Employees were subjected to meal period violations
19 when they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a
20 meal period after the 5th hour of work, and (3) not provided a mandated second meal period on
21 occasions on shifts in excess of 10 hours.

22 62. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
23 Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff
24 and the Represented Employees were not provided with all mandatory meal periods and
25 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
26 compensation at the regular rate of pay in lieu thereof.

27 63. At all relevant times herein, Defendants failed to provide Plaintiff and the
28 Represented Employees all mandated meal periods and failed to pay wage premiums in lieu of

1 mandated meal or rest periods, thereby receiving an economic benefit.

2 64. On information and belief, Plaintiff and the Represented Employees did not
3 voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers
4 obtained from Plaintiff and the Represented Employees were not willfully obtained, were not
5 voluntarily agreed to, were a condition of employment, or were a part of a contract of an
6 unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Represented
7 Employees to take meal periods in accordance with California law.

8 65. By their failure to provide Plaintiff and the Represented Employees with meal
9 periods as required by California law, and failing to pay one hour of additional wages in lieu of
10 each meal period not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
11 IWC Wage Order § 11. Accordingly, Defendants are liable for one hour of additional wages at
12 the employee's regular rate of compensation for each work day that a meal period was not
13 lawfully provided in an amount to be proven at time of trial.

14 66. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
15 and IWC Wage Order § 11, Defendants, and each of them, are liable to Plaintiff and the
16 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

17 **FOURTH CAUSE OF ACTION**

18 **FAILURE TO PROVIDE REST BREAKS**

19 (Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

20 *Plaintiff and the Rest Period Subclass, Against All Defendants*

21 67. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

23 68. Plaintiff and the Represented Employees are and/or were employees of
24 Defendants who did not receive proper protections and benefits of the laws governing mandatory
25 rest breaks.

26 69. Labor Code § 226.7 requires employers, including Defendants, to provide rest
27 breaks to its employees as mandated by Order of the Industrial Welfare Commission.

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1 70. The IWC Wage Order § 12 states, in part, that every employer shall authorize and
2 permit all employees to take rest periods, which insofar as practicable shall be in the middle of
3 each work period. Employees shall receive a 10-minute rest period every four hours or major
4 fraction thereof that they are required to work. Authorized rest period time shall be counted, as
5 hours worked, for which there shall be no deduction from wages.

6 71. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage
7 Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay
8 at her regular rate of compensation for each day that the rest period is not provided.

9 72. At all relevant times, Plaintiff and the Represented Employees were denied
10 mandated paid rest breaks by virtue of Defendants' policy that only paid its truck drivers for
11 miles driven. As Plaintiff and the Represented Employees could not earn or generate
12 compensation during an off-duty rest break, Plaintiff and the Represented Employees were
13 illegally denied paid rest breaks.

14 73. Defendants also failed to provide Plaintiff and the Represented Employees with
15 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as
16 mandated by California law. Defendants did not schedule rest breaks and the Represented
17 Employees were often not authorized and/or permitted to take mandated rest breaks due to being
18 overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the
19 Represented Employees worked in excess of 10 hours in a shift, Defendants failed to authorize
20 and/or permit a third mandated rest break.

21 74. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage
22 Order every pay period with respect to Plaintiff and the Represented Employees because Plaintiff
23 and the Represented Employees were not provided with all mandatory rest periods and
24 Defendants failed to pay Plaintiff and the Represented Employees one additional hour of
25 compensation in lieu thereof.

26 75. At all relevant times herein, Defendants failed to provide Plaintiff and the
27 Represented Employees all mandated rest breaks and failed to pay wage premiums in lieu of
28 mandated rest periods, thereby receiving an economic benefit.

1 76. By their failure to provide Plaintiff and the Represented Employees with rest
2 breaks as required by California law, and failing to pay one hour of additional wages in lieu of
3 each rest break not provided, Defendants willfully violated Labor Code §§ 226.7 and 512, and
4 IWC Wage Order § 12. Accordingly, Defendants are liable for one hour of additional wages at
5 the employee's regular rate of compensation for each workday that a paid rest break was not
6 lawfully provided in an amount to be proven at time of trial.

7 77. Also, as a direct result of Defendants' violations of Labor Code §§ 226.7 and 512,
8 and IWC Wage Order § 12, Defendants, and each of them, are liable to Plaintiff and the
9 Represented Employees for unpaid wage premiums, penalties, costs, and interest.

10 **FIFTH CAUSE OF ACTION**

11 **FAILURE TO TIMELY PAY FINAL WAGES**

12 (Labor Code §§ 201 – 203)

13 *Plaintiff and the Waiting Time Penalties Subclass, Against All Defendants*

14 78. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
15 alleged herein.

16 79. Plaintiff and the Represented Employees are and/or were employees of
17 Defendants who did not receive proper protections and benefits of the laws governing the timing
18 and payment of wages.

19 80. Labor Code § 201 requires that the employer immediately pay any wages, without
20 abatement or reduction, to any employee who is discharged.

21 81. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
22 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
23 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

24 82. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
25 penalty from the due date thereof at the same rate until paid or until an action therefore is
26 commenced, but the wages shall not continue for more than thirty (30) days.

27 83. At all relevant times, Defendants employed a policy and practice whereby
28 Plaintiff and the Represented Employees were not paid all wages due and owing upon separation

1 of employment within the time required by Labor Code §§ 201 and 202.

2 84. Also, at all relevant times, Defendants engaged in the practice of failing to pay all
3 wages due and owing to Plaintiff and the Represented Employees upon separation of
4 employment, including, but not limited to, minimum and regular wages, as well as meal and rest
5 period premiums.

6 85. Plaintiff alleges that, at all times material to this action, Defendants had a planned
7 pattern and practice of failing to timely pay Plaintiff and the Represented Employees all wages
8 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.
9 Consequently, pursuant to Labor Code § 203, Defendants owe Plaintiff and the Represented
10 Employees the above-described waiting time penalty, all in an amount to be shown according to
11 proof at trial and within the jurisdiction of this Court.

12 **SIXTH CAUSE OF ACTION**

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

14 (Labor Code § 226)

15 *Plaintiff and the Wage Statement Penalties Subclass, Against All Defendants*

16 86. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
17 alleged herein.

18 87. Plaintiff and the Represented Employees are and/or were employees of
19 Defendants who did not receive proper protections and benefits of the laws governing the
20 provision of accurate itemized wage statements.

21 88. Labor Code § 226(a) requires an employer to provide its employees with itemized
22 wage statements accurately stating gross wages earned, all deductions, net wages earned, the
23 inclusive dates of the pay period, the employee's name and the last four digits of his or her
24 Social Security number (or employee identification number), the name and address of the legal
25 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
26 corresponding number of hours worked at each hourly rate by the employee.

27 89. Defendants violates Labor Code § 226(a) every pay period with respect to
28 Plaintiff and the Represented Employees because the wage statements that Defendants issued to

1 Plaintiff and the Represented Employees failed to provide any information regarding hours
2 worked, and therefore the wage statements did not state “total hours worked by the employee” in
3 direct violation of Labor Code § 226(a)(2).

4 90. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
5 the wage statements failed to accurately state gross wages earned, all deductions, net wages
6 earned, the name and address of the legal entity that is the employer, and all applicable hourly
7 rates in effect during the pay period and the corresponding number of hours at each hourly rate
8 by the employee.

9 91. Moreover, Labor Code § 226.2 states that “[f]or employees compensated on a
10 piece-rate basis during a pay period, the following shall apply for that pay period: [...] (2) the
11 itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items
12 specified in that subdivision, separately state the following, to which the provisions of Section
13 226 shall also be applicable: (A) the total hours of compensable rest and recovery periods, the
14 rate of compensation, and the gross wages paid for those periods during the pay period [and] (B)
15 [...] the total hours of other nonproductive time, [...] the rate of compensation, and the gross
16 wages paid for that time during the pay period.”

17 92. At all relevant times, Defendants failed to provide a wage statement to Plaintiff
18 and the Represented Employees that complied with the requirements of Labor Code §
19 226.2(a)(2) because the wage statements did not include any information regarding compensable
20 rest and recovery periods, nonproductive time, or the rates of pay and compensation for the
21 same. As such, Defendants violate Labor Code § 226 and § 226.2 every pay period with respect
22 to Plaintiff and the Represented Employees.

23 93. Defendants’ failure to provide the required writing deprived Plaintiff and the
24 Represented Employees of the ability to know, understand, and question the calculation and rate
25 of pay and hours used to calculate the wages paid by Defendants. Therefore, Plaintiff and the
26 Represented Employees had no way to dispute the resulting miscalculation of wages, all of
27 which resulted in an unjustified economic enrichment to said Defendants. As a direct result,
28 Plaintiff and the Represented Employees have suffered and continue to suffer, substantial losses

1 related to the use and enjoyment of such wages, lost interest on such wages and expenses and
2 attorney's fees in seeking to compel Defendants to fully perform its obligation under state law,
3 all to their respective damages in amounts according to proof at trial.

4 94. As a result of Defendants' knowing and intentional failure to comply with Labor
5 Code § 226(a), Plaintiff and the Represented Employees have suffered an injury in that each was
6 prevented from knowing, understanding and disputing the wage payments paid to them.
7 Furthermore, Plaintiff and the Represented Employees have each suffered an injury in that the
8 failure to show all wages earned on the itemized wage statements resulted in Plaintiff and the
9 Represented Employees being denied all necessary deductions, payments, and withholdings
10 owed by the employer, including, but not limited to, the failure to make all necessary
11 contributions for unemployment benefits, social security benefits, proper payment of taxes and
12 withholdings, and other mandated state and federal benefits.

13 95. Plaintiff has also been injured as a result of having to bring this action to attempt
14 to obtain correct wage information following Defendants' refusal to comply with many of the
15 mandates of California's Labor Code and related laws and regulations.

16 96. Labor Code § 226(e) requires Defendants to pay the greater of all actual damages
17 or fifty dollars (\$50.00) per employee for the initial pay period in which a violation occurred, and
18 one hundred dollars (\$100.00) per employee for each violation in subsequent pay periods, plus
19 attorney's fees and costs, to Plaintiff and the Represented Employees who were injured by
20 Defendants' failure to comply with Labor Code § 226(a). The exact amount of the applicable
21 penalty is all in an amount to be shown according to proof at trial.

22 **SEVENTH CAUSE OF ACTION**

23 **UNFAIR AND UNLAWFUL COMPETITION**

24 (Business and Professions Code § 17200 *et seq.*)

25 *Plaintiff and the Represented Employees against All Defendants*

26 97. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

28 ///

1 98. California Business & Professions Code § 17200, *et seq.*, prohibits acts of unfair
2 competition, which includes any “unlawful, unfair or fraudulent business act or practice.” The
3 Represented Employees, including Plaintiff, have suffered and continue to suffer injuries in fact,
4 due to the unfair and unlawful business practices of Defendants as alleged herein.

5 99. Defendants, and each of them, are “persons” as defined under Business &
6 Professions Code § 17021.

7 100. As alleged herein, Defendants engaged in conduct that violated California’s wage
8 and hour laws, including failure to pay minimum and regular wages, failure to provide mandated
9 meal periods and rest breaks, failure to reimburse business expenses, and failure to timely pay
10 final wages, all in order to decrease their costs and increase their profits.

11 101. At all times relevant herein, Defendants did not pay Plaintiff and the Represented
12 Employees wages and monies and other financial obligations to which they were entitled.

13 102. As a result of Defendants’ failure to comply with the Labor Code and IWC
14 Orders, Represented Employees, including Plaintiff, suffered a loss of wages and monies, all in
15 an amount to be shown according to proof at trial. Defendants’ ongoing violations of the
16 foregoing statutes and laws constitute a violation of Bus. & Prof. Code § 17200, *et seq.*

17 103. Defendants’ violations of the California Labor Code and IWC Wage Orders and
18 its scheme to lower its payroll costs as alleged herein, constitute unlawful and unfair business
19 practices because it was done in a systematic manner over a period of time to the detriment of the
20 Plaintiff and all others similarly-situated.

21 104. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
22 unlawful, and harmful to Plaintiff, other Represented Employees, and to the general public.
23 Plaintiff seek to enforce important rights affecting the public interest within the meaning of Code
24 of Civil Procedure § 1021.5.

25 105. A violation of California Business & Professions Code § 17200, *et seq.* may be
26 predicated on the violation of any state or federal law. All of the acts described herein as
27 violations of, among other things, the California Labor Code and IWC Wage Orders, are
28 unlawful and in violation of public policy, and in addition are immoral, unethical, oppressive,

1 fraudulent and unscrupulous, and thereby constitute unfair, unlawful and/or fraudulent business
2 practices in violation of California Business and Professions Code §§ 17200, et seq.

3 106. Plaintiff, individually, and on behalf of the Represented Employees, has no plain,
4 speedy, and/or adequate remedy at law to redress the injuries which they have suffered as a
5 consequence of Defendants' unfair, unlawful and/or fraudulent business practices. As a result of
6 the unfair, unlawful and/or fraudulent business practices described above, Plaintiff, individually,
7 and on behalf of the Represented Employees, has suffered and will continue to suffer irreparable
8 harm unless Defendants, and each of them, are restrained from continuing to engage in said
9 unfair, unlawful and/or fraudulent business practices.

10 107. Plaintiff, individually, and on behalf of the Represented Employees, is entitled to,
11 and does, seek such relief as may be necessary to disgorge the profits which Defendants have
12 acquired, or of which Plaintiff and Represented Employees have been deprived, by means of the
13 above-described unfair, unlawful and/or fraudulent business practices. Plaintiff and the
14 Represented Employees are not obligated to establish individual knowledge of the unfair
15 practices of Defendants in order to recover restitution.

16 108. Plaintiff, individually, and on behalf of the Represented Employees, is further
17 entitled to and do seek a declaration that the above described business practices are unfair,
18 unlawful and/or fraudulent, and injunctive relief restraining Defendants, and each of them, from
19 engaging in any of the above-described unfair, unlawful and/or fraudulent business practices in
20 the future.

21 109. Pursuant to Business & Professions Code §§ 17200, et seq., Plaintiff and
22 Represented Employees are entitled to restitution of the wages withheld and retained by
23 Defendants during a period that commences four years prior to the filing of this complaint; a
24 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and
25 Represented Employees; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure § 1021.5 and other applicable laws; and an award of costs.

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1 **VI. LABOR CODE PRIVATE ATTORNEYS GENERAL ACT CAUSES OF ACTION**
2 **(Cal. Lab. Code §§ 2698 – 2699.5)**

3 110. Plaintiff is an “aggrieved employee” under the PAGA as he was employed by
4 Defendants during the applicable statutory period and suffered one or more of the Labor Code
5 violations alleged herein. As such, Plaintiff may recover the remedies described herein in a civil
6 action filed on behalf of himself and all other similarly situated current and former aggrieved
7 employees in California against whom one or more of the alleged violations was committed
8 (hereinafter the “Aggrieved Employees”).

9 111. Plaintiff seeks to recover all applicable and available PAGA remedies pursuant to
10 Labor Code § 2699, as well as attorneys’ fees, costs, and/or other damages as permitted by
11 PAGA through a representative action pursuant to the PAGA and the California Supreme Court
12 in *Arias v. Superior Court* (2009) 46 Cal. 4th 969. Therefore, Plaintiff is not required to, nor
13 does he, seek class certification of the PAGA claims under Code of Civil Procedure § 382.

14 112. Pursuant to Labor Code § 2699.3(a), on October 2, 2020, Plaintiff gave written
15 notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by
16 certified mail to Defendants of the specific provisions of the Labor Code alleged to have been
17 violated, including the facts and theories to support the alleged violations. Plaintiff is currently
18 complying with the procedures for bringing suit specified in California Labor Code § 2699.3,
19 and this Complaint will be deemed amended to include the PAGA allegations enumerated below
20 when more than sixty-five (65) days have passed since the Notice was mailed to Defendants and
21 the LWDA chooses not to investigate the allegations herein.

22 **EIGHTH CAUSE OF ACTION**

23 **PAGA ASSESSMENT FOR FAILURE TO PAY MINIMUM WAGES**

24 (Labor Code §§ 200, 1194, 1194.2, 1197; IWC Wage Order § 4)

25 *Plaintiff and the Aggrieved Employees against All Defendants*

26 113. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
27 alleged herein.

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1 114. Plaintiff and the Aggrieved Employees were not exempt from the requirement to
2 be paid at least the applicable California minimum wage throughout the statutory period for each
3 hour worked.

4 115. Plaintiff and the Aggrieved Employees were not provided proper minimum and
5 regular wages owed due to Defendants' policies which did not compensation for all time their
6 employees spent under Defendants' control.

7 116. Consequently, Defendants violated California Labor Code laws and minimum
8 wage laws, *inter alia*, Labor Code §§ 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and
9 Cal. Code Regs., tit. 8, section 11090, subds. 1 and 4(B).

10 117. Thus, Defendants violated California Labor Code laws, *inter alia*, Labor Code §§
11 200, 221, 222, 223, 1197, IWC Wage Order 9, § 4, and Cal. Code Regs., tit. 8, section 11090,
12 subds. 1 and 4(B).

13 118. Plaintiff is informed and believes and thereon alleges that Defendants
14 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
15 Employees for each hour worked in violation of Labor Code §§ 221-223, 1194 and 1197.

16 119. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
17 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
18 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

19 **NINTH CAUSE OF ACTION**

20 **PAGA ASSESSMENT FOR FAILURE TO PAY OVERTIME WAGES**

21 (Labor Code §§ 204 and 510; IWC Wage Order § 3(A))

22 *Plaintiff and the Aggrieved Employees against All Defendants*

23 120. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
24 alleged herein.

25 121. Plaintiff and the Aggrieved Employees were "nonexempt" employees of
26 Defendants who did not receive proper protections and benefits of the laws governing payment
27 of overtime wages.

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1 122. Labor Code § 204 requires that the employer timely pay all overtime wages to its
2 employees. Labor Code § 510(a) and the applicable IWC Wage Order § 3(A) provide that any
3 work performed in excess of eight (8) hours in one workday or in excess of forty (40) hours in
4 any one workweek shall be compensated at the rate of no less than one and one-half times the
5 regular rate of pay for an employee. Furthermore, any work performed in excess of twelve (12)
6 in one workday shall be compensated at twice the regular rate of pay for an employee.

7 123. At all relevant times, Plaintiff and the Aggrieved Employees were required by
8 Defendants to work hours in excess of 8 and/or 12 per day and/or 40 per week. However, due to
9 Defendants' failure to accurately record and compensate for all hours worked, Plaintiff and the
10 Aggrieved Employees did not receive proper overtime compensation.

11 124. Moreover, Plaintiff and the Aggrieved Employees were frequently required to
12 undergo temperature checks when entering the facility. However, despite that Plaintiff and the
13 Aggrieved Employees were subject to Defendants' control while waiting to go through the
14 temperature checkpoint, Defendants did not provide any compensation for the time it took to
15 complete the process, leading to a failure to pay proper overtime wages.

16 125. Defendants violate Labor Code §§ 204 and 510 and the applicable IWC Wage
17 Order § 3(A) every pay period with respect to Plaintiff and the Aggrieved Employees because
18 Defendants failed to pay Plaintiff and the Aggrieved Employees for all overtime hours worked,
19 and required Plaintiff and the Aggrieved Employees to work without being properly
20 compensated for all overtime wages earned.

21 126. Plaintiff is informed and believes and thereon alleges that Defendants
22 intentionally, willfully, and improperly failed to pay wages to Plaintiff and the Aggrieved
23 Employees for each hour worked in violation of Labor Code §§ 204, 221-223, 510, 1194 and
24 1197.

25 127. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
26 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
27 and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

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TENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE COMPLIANT MEAL PERIODS

(Labor Code § 226.7 and 512; IWC Wage Order § 11, 12)

Plaintiff and the Aggrieved Employees against All Defendants

128. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

129. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory meal periods.

130. Labor Code § 226.7 requires employers, including Defendants, to provide employees with meal periods as mandated by the Industrial Welfare Commission.

131. Labor Code § 512(a), in part, provides that employers, including Defendants, may not employ an employee for a work period of more than five hours per day without providing an employee the opportunity to take an uninterrupted meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and the employee. Employers may not employ an employee for a work period more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.

132. Pursuant to Labor Code § 226.7(b) and the applicable IWC Wage Order § 11(B), Defendants shall pay an employee one additional hour of pay at the employee's regular rate of pay for each meal period that is missed.

133. At all relevant times herein, Plaintiff and the Aggrieved Employees were denied the 30-minute meal periods to which they were entitled. As a result of Defendants' policies and practices, Plaintiff and the Aggrieved Employees were subjected to meal period violations when they were: (1) unable to take an off-duty meal period due to workload, (2) forced to take a meal period after the 5th hour of work, and (3) not provided a mandated second meal period on occasions on shifts in excess of 10 hours.

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134. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory meal periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation at the regular rate of pay in lieu thereof.

135. On information and belief, Plaintiff and the Aggrieved Employees did not voluntarily or willfully waive the mandated meal periods. Any expressed or implied waivers obtained from Plaintiff and the Aggrieved Employees were not willfully obtained, were not voluntarily agreed to, were a condition of employment, or were a part of a contract of an unlawful adhesion. Defendants did not permit or authorize Plaintiff and the Aggrieved Employees to take meal periods in accordance with California law.

136. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

ELEVENTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO PROVIDE REST BREAKS

(Labor Code §§ 226.7 and 512; IWC Wage Order § 12)

Plaintiff and the Aggrieved Employees against All Defendants

137. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

138. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws governing mandatory rest breaks.

139. Labor Code § 226.7 requires employers, including Defendants, to provide rest breaks to its employees as mandated by Order of the Industrial Welfare Commission.

140. The IWC Wage Order § 12 states, in part, that every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Employees shall receive a 10-minute rest period every four hours or major fraction thereof that they are required to work. Authorized rest period time shall be counted, as

hours worked, for which there shall be no deduction from wages.

141. Pursuant to Labor Code § 226.7(b) and Section 12(B) of the applicable Wage Order, Defendants shall pay Plaintiff and the Represented Employees one additional hour of pay at her regular rate of compensation for each day that the rest period is not provided.

142. Defendants also failed to provide Plaintiff and the Aggrieved Employees with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. Defendants did not schedule rest breaks and the Aggrieved Employees were often not authorized and/or permitted to take mandated rest breaks due to being overwhelmed by their hectic workload. Furthermore, on occasions when Plaintiff and the Aggrieved Employees worked in excess of 10 hours in a shift, Defendants failed to authorize and/or permit a third mandated rest break.

143. Defendants violated Labor Code §§ 226.7, 512, and the applicable IWC Wage Order every pay period with respect to Plaintiff and the Aggrieved Employees because Plaintiff and the Aggrieved Employees were not provided with all mandatory rest periods and Defendants failed to pay Plaintiff and the Aggrieved Employees one additional hour of compensation in lieu thereof.

144. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

TWELFTH CAUSE OF ACTION

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY WAGES EACH PERIOD

(Labor Code § 204)

Plaintiff and the Aggrieved Employees against All Defendants

145. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully alleged herein.

146. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants who did not receive proper protections and benefits of the laws regarding the timing of payment of wages each period.

1 147. Labor Code § 204(a) states that all wages earned by a person are due and payable
2 twice during each calendar month, and further states that wages earned during the first through
3 fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that
4 wages earned between the sixteenth and last day of the month must be paid by the tenth day of
5 the following month.

6 148. Furthermore, Labor Code § 204(d) states “[t]he requirements of this section shall
7 be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if
8 the wages are paid not more than seven calendar days following the close of the payroll period.”

9 149. At all relevant times herein, Defendants did not provide Plaintiff and the
10 Aggrieved Employees with all wages due and owing each period within the time required by
11 Labor Code § 204. Moreover, Defendants did not provide Plaintiff and the Aggrieved
12 Employees with all wages due and owing each pay period, including, but not limited to,
13 minimum wages and meal and rest period premiums within the time specified by § 204.

14 150. As a result of the unlawful employment practices alleged herein, Plaintiff seeks
15 the assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699,
16 and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted under PAGA.

17 **THIRTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES**

19 (Labor Code §§ 201 – 203)

20 *Plaintiff and the Aggrieved Employees against All Defendants*

21 151. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
22 alleged herein.

23 152. Plaintiff and the Aggrieved Employees are and/or were “non-exempt” employees
24 of Defendants who did not receive proper protections and benefits of the laws governing the
25 timing and payment of final wages.

26 153. Labor Code § 201 requires that the employer immediately pay any wages, without
27 abatement or reduction, to any employee who is discharged.

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1 154. Labor Code § 202 requires that the employer pay all wages earned and unpaid,
2 without abatement or reduction, no later than 72 hours of receiving an employee's notice of
3 intent to quit or immediately at the time of quitting if at least a 72-hour notice was provided.

4 155. Labor Code §§ 201-203 cause the unpaid wages of the employee to continue as a
5 penalty from the due date thereof at the same rate until paid or until an action therefore is
6 commenced, but the wages shall not continue for more than thirty (30) days.

7 156. At all relevant times here, Defendants did not provide Plaintiff and the Aggrieved
8 Employees with all wages due and owing upon separation of employment, including, but not
9 limited to, minimum, regular, and overtime wages, as well as meal and rest period premiums,
10 within the time specified by Labor Code §§ 201 – 203.

11 157. Plaintiff alleges that, at all times material to this action, Defendants had a planned
12 pattern and practice of failing to timely pay to Plaintiff and the Aggrieved Employees all wages
13 due and owing upon separation of employment as required by Labor Code §§ 201 and 202.

14 158. As a result of the unlawful employment practices alleged herein, Plaintiff seeks the
15 assessment of all applicable and available PAGA remedies pursuant to Labor Code § 2699, and
16 seeks to recover all attorneys' fees, costs, and/or any other damages permitted under PAGA.

17 **FOURTEENTH CAUSE OF ACTION**

18 **PAGA ASSESSMENT FOR**

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

20 (Labor Code § 226)

21 *Plaintiff and the Aggrieved Employees against All Defendants*

22 159. Plaintiff incorporates the preceding paragraphs of the Complaint as if fully
23 alleged herein.

24 160. Plaintiff and the Aggrieved Employees are and/or were employees of Defendants
25 who did not receive proper protections and benefits of the laws governing the provision of
26 accurate itemized wage statements.

27 161. Labor Code § 226(a) requires an employer to provide its employees with itemized
28 wage statements accurately stating gross wages earned, all deductions, net wages earned, the

1 inclusive dates of the pay period, the employee’s name and the last four digits of his or her
2 Social Security number (or employee identification number), the name and address of the legal
3 entity that is the employer, and all applicable hourly rates in effect during the pay period and the
4 corresponding number of hours worked at each hourly rate by the employee.

5 162. Defendants violates Labor Code § 226(a) every pay period with respect to
6 Plaintiff and the Aggrieved Employees because the wage statements that Defendants issued to
7 Plaintiff and the Aggrieved Employees failed to provide any information regarding hours
8 worked, and therefore the wage statements did not state “total hours worked by the employee” in
9 direct violation of Labor Code § 226(a)(2).

10 163. Furthermore, Defendants violate Labor Code § 226(a) every pay period because
11 the wage statements failed to accurately state gross wages earned, all deductions, net wages
12 earned, the name and address of the legal entity that is the employer, and all applicable hourly
13 rates in effect during the pay period and the corresponding number of hours at each hourly rate
14 by the employee.

15 164. Therefore, Defendants violate Labor Code § 226(a) every pay period with respect
16 to Plaintiff and the Aggrieved Employees because Defendants failed to provide complete and
17 accurate wage statements to Plaintiff and the Aggrieved Employees that complied with the
18 requirements of Labor Code § 226(a). See *Lopez v. Friant & Associates, LLC* (2017) 15
19 Cal.App.5th 773, 788 (“a plaintiff seeking civil penalties under PAGA for a violation of section
20 226(a) does not have to satisfy the “injury” and “knowing and intentional” requirements of
21 section 226(e)(1)”).

22 165. As a result of the Defendants’ violations of Labor Code §226(a)(9), Plaintiff seeks
23 the assessment of all applicable and available PAGA remedies pursuant to Labor Code §§ 226.3
24 and 2699, and seeks to recover all attorneys’ fees, costs, and/or any other damages permitted
25 under PAGA. See *Raines v. Coastal Pacific Food Distributors, Inc.* (2018) 23 Cal.App.5th 667,
26 675 (“Section 226.3 provides the civil penalty for failure to comply” with Labor Code § 226).

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VII. PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others similarly situated, prays for judgment and relief against Defendants, jointly and severally, as follows:

1. As to the Eighth through Fourteenth Causes of Action, the assessment of all applicable and available remedies under the PAGA;
2. For reasonable attorneys' fees and costs as permitted under the PAGA;
3. That the First through Seventh Causes of Action be certified as a class action;
4. That Plaintiff be appointed as Class Representative;
5. That counsel for Plaintiff be appointed Class Counsel;
6. For all applicable statutory penalties recoverable under the First through Seventh Causes of Action to the extent permitted by law, including those pursuant to Labor Code and Orders of the Industrial Welfare Commission;
7. For reasonable attorneys' fees, costs of suit, and interest to the extent permitted by law, including those pursuant to the Labor Code;
8. For injunctive relief and/or restitution as provided by the Labor Code and Business and Professions Code § 17200, *et seq.*;
9. For a declaratory judgment that Defendants have violated Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 221, 226, 226.3, 226.7, 256, 512, 558, 1194, and 2802, among other sections inadvertently omitted;
10. For an award of damages in the amount of unpaid compensation including, but not limited to, unpaid wages, benefits, and penalties according to proof, including interest thereon;
11. For pre- and post-judgment interest; and
12. For such other relief as the Court deems just and proper.

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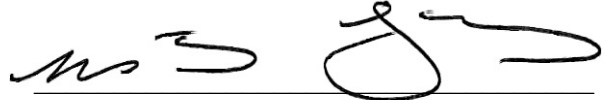
DEMAND FOR JURY TRIAL

WHEREFORE, Plaintiff, on behalf of himself, on a representative basis, and all others similarly situated, hereby demands a jury trial as to the First through Fourteenth Causes of Action pled herein.

Dated: October 19, 2020

FERNANDEZ & LAUBY LLP

BY:



Brian J. Mankin, Esq.
Misty M. Lauby, Esq.
Attorneys for Plaintiff