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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

JAN 19 2021

BY 
NICOLE CARTWRIGHT, DEPUTY

7 Attorneys for Plaintiff Ezequiel Herrera
8

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN BERNARDINO
11

12 EZEQUIEL HERRERA, individually, and
13 on behalf of other members of the general
public similarly situated,

14 Plaintiff,

15 vs.

16 GIBSON OVERSEAS, INC., a California
17 corporation; and DOES 1 through 10,
inclusive,

18 Defendants.
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Case No.: CIV SB 2024673

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, ET
SEQ.**

- (1) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (2) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (3) Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 (Failure to Provide Meal Periods);
- (4) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (5) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (6) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (7) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (8) Violation of California Labor Code §§ 551, 552, and 558 (Failure to Provide One Day of Rest in Seven);

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- (9) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;
- (10) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (11) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (12) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiff Ezequiel Herrera, individually and on behalf of all other members of the
2 public similarly situated and as an aggrieved employee and on behalf of all other aggrieved
3 employees, alleges as follows:

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiff, the State of California, and other
8 current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiff’s
17 share of damages, penalties, and other relief sought in this action does not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

form a significant basis for Plaintiff's claims; and (d) no other class action has been filed within the past three (3) years on behalf of the same proposed class against Defendants asserting the same or similar factual allegations.

3. Venue is proper in this Court because Defendants employ persons within the County of San Bernardino and have violated the requirements of the California Labor Code and applicable Wage Order in this county which give rise to the penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have violated the requirements of the California Labor Code and applicable Wage Order in at least one location within the County of San Bernardino, including Defendants' facility located at 7776 Tippecanoe Ave., San Bernardino, California 92410. Pursuant to California Civil Code of Procedure section 393, venue is proper for the recovery of a penalty imposed by statute in the county in which the cause, or some part of the cause, arose. Because Defendants have employees in San Bernardino County and Plaintiff could bring this action to recover penalties in San Bernardino County, venue is proper. *Id.*

THE PARTIES

4. Plaintiff Ezequiel Herrera is a resident of Los Angeles, in Los Angeles California. Defendants employed Plaintiff as an hourly paid, non-exempt Laborer and Helper from approximately June 2006 to May 2020. Plaintiff worked for Defendants at their location in Commerce, California. During his employment, Plaintiff typically worked eight (8) hours or more per day, and five (5) or more days per week. Plaintiff's primary job duties included, without limitation, painting tabletop kitchenware products, sweeping and mopping the painting area, and periodically installing and dismantling onsite trade show displays.

5. GIBSON OVERSEAS, INC. was and is, upon information and belief, a California corporation, and at all times hereinafter mentioned, an employer whose employees are engaged throughout this county, the State of California, or the various states of the United States of America.

6. Plaintiff is unaware of the true names or capacities of the Defendants sued herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 7. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of GIBSON OVERSEAS, INC. at all relevant
5 times.

6 8. Plaintiff is informed and believes, and thereon alleges, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to, GIBSON
8 OVERSEAS, INC. and/or DOES 1 through 10 (collectively, “Defendants” or “GIBSON
9 OVERSEAS”), each acting as the agent, employee, alter ego, and/or joint venturer of, or
10 working in concert with, each of the other co-Defendants and was acting within the course and
11 scope of such agency, employment, joint venture, or concerted activity with legal authority to
12 act on the others’ behalf. The acts of any and all Defendants were in accordance with, and
13 represent, the official policy of Defendants.

14 9. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

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

21 **GENERAL ALLEGATIONS**

22 11. Defendants are a leading producer of dinnerware, flatware, cookware,
23 glassware, coffee and tea accessories, kitchen tools and gadgets, and other tabletop and
24 housewares products. Upon information and belief, Defendants maintain a single, centralized
25 Human Resources (“HR”) department at their company headquarters in Commerce,
26 California, which is responsible for the recruiting and hiring of new employees, and
27 communicating and implementing Defendants’ company-wide policies, including timekeeping
28 policies and meal and rest period policies, to employees throughout California.

1 12. In particular, Plaintiff and class members, on information and belief, received
2 the same standardized documents and/or written policies. Upon information and belief, the
3 usage of standardized documents and/or written policies, including new-hire documents,
4 indicate that Defendants dictated policies at the corporate level and implemented them
5 company-wide, regardless of their employees' assigned locations or positions. Upon
6 information and belief, Defendants set forth uniform policies and procedures in several
7 documents provided at an employee's time of hire.

8 13. Upon information and belief, Defendants maintain a centralized Payroll
9 department at their company headquarters in Commerce, California, which processes payroll
10 for all non-exempt, hourly paid employees working for Defendants at their various locations
11 and jobsites in California, including Plaintiff and class members. Based upon information and
12 belief, Defendants issue the same formatted wage statements to all non-exempt, hourly paid
13 employees in California, irrespective of their work locations. Upon information and belief,
14 Defendants process payroll for departing employees in the same manner throughout the State
15 of California, regardless of the manner in which each employee's employment ends.

16 14. Defendants continue to employ non-exempt or hourly paid employees in
17 California.

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

22 16. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and class
23 members were not paid for all hours worked because all hours worked were not recorded.

24 17. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and class members were entitled to receive certain wages for
26 overtime compensation and that they were not receiving certain wages for overtime
27 compensation.

28 18. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and class members were entitled to be paid at a regular rate
2 of pay, and corresponding overtime rate of pay, that included as eligible income all
3 remuneration required by law, including but not limited to, all income derived from incentive
4 pay, nondiscretionary bonuses, and/or other forms of compensation.

5 19. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
6 should have known that Plaintiff and class members were entitled to receive at least minimum
7 wages for compensation and that they were not receiving at least minimum wages for work
8 that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiff
9 and class members were not paid at least minimum wages for work done off-the-clock.

10 20. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and class members were entitled to meal periods in
12 accordance with the Labor Code or payment of one (1) additional hour of pay at their regular
13 rates of pay when they were not provided with timely, uninterrupted, thirty (30) minute meal
14 periods and that Plaintiff and class members were not provided with all meal periods or
15 payment of one (1) additional hour of pay at their regular rates of pay when they did not
16 receive a timely, uninterrupted, thirty (30) minute meal period.

17 21. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
18 should have known that Plaintiff and class members were entitled to rest periods in
19 accordance with the Labor Code and applicable IWC Wage Order or payment of one (1)
20 additional hour of pay at their regular rates of pay when they were not authorized and
21 permitted to take a compliant rest period. In violation of the California Labor Code, Plaintiff
22 and class members were not authorized and permitted to take compliant rest periods, nor did
23 Defendants provide Plaintiff and class members with payment of one (1) additional hour of
24 pay at their regular rates of pay when they were not authorized and permitted to take a
25 compliant rest period.

26 22. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
27 should have known that Plaintiff and class members were entitled to receive complete and
28 accurate wage statements in accordance with California law. In violation of the California

1 Labor Code, Plaintiff and class members were not provided complete and accurate wage
2 statements.

3 23. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
4 should have known that they had a duty to maintain accurate and complete payroll records in
5 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
6 and intentionally failed to do so.

7 24. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
8 should have known that Plaintiff and class members were entitled to timely payment of all
9 wages earned upon termination of employment. In violation of the California Labor Code,
10 Plaintiff and class members did not receive payment of all wages due, including, but not
11 limited to, overtime wages, minimum wages, and/or meal and rest period premium wages,
12 within permissible time periods.

13 25. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
14 should have known that Plaintiff and class members were entitled to timely payment of wages
15 during their employment. In violation of the California Labor Code, Plaintiff and class
16 members did not receive payment of all wages, including, but not limited to, overtime wages,
17 minimum wages, and/or meal and rest period premium wages, within permissible time
18 periods.

19 26. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
20 should have known that Plaintiff and class members were entitled to the portion of wages
21 previously paid and subsequently unlawfully deducted by Defendants.

22 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
23 should have known that Plaintiff and class members were entitled to payment of wages as
24 designated by statute. In violation of the California Labor Code, Defendants secretly paid
25 Plaintiff and class members lower wages that required by statute while purporting to pay them
26 proper wages.

27 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
28 should have known that Plaintiff and class members were entitled to one day's rest in seven.

1 In violation of the California Labor Code, Defendants required Plaintiff and class members to
2 work more than six consecutive days without a day of rest, where the total hours worked
3 exceeded 30 hours in any week or six hours in any one day thereof.

4 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and class members were entitled to receive full
6 reimbursement for all business-related expenses and costs they incurred during the course and
7 scope of their employment and that they did not receive full reimbursement of applicable
8 business-related expenses and costs incurred.

9 30. Plaintiff is informed and believes, and thereon alleges, that at all times herein
10 mentioned, Defendants knew or should have known that Defendants had a duty to provide
11 Plaintiff and/or class members with written notice of the material terms of their employment
12 with Defendants as required by the California Wage Theft Prevention Act, but willfully,
13 knowingly, and intentionally failed to do so.

14 31. Plaintiff is informed and believes, and thereon alleges, that at all times herein
15 mentioned, Defendants knew or should have known that they had a duty to provide Plaintiff
16 and/or class members with safety devices and safeguards, such as personal protective
17 equipment, to protect their life, safety, and health in the workplace, but willfully, knowingly,
18 and intentionally failed to do so.

19 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
20 mentioned, Defendants knew or should have known that they had a duty to compensate
21 Plaintiff and class members for all hours worked, and that Defendants had the financial ability
22 to pay such compensation, but willfully, knowingly, and intentionally failed to do so, and
23 falsely represented to Plaintiff and class members that they were properly denied wages, all in
24 order to increase Defendants' profits.

25 **PAGA REPRESENTATIVE ALLEGATIONS**

26 33. At all times herein set forth, PAGA provides that any provision of law under
27 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
28 assessed and collected by the LWDA for violations of the California Labor Code and

1 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
2 civil action brought on behalf of themselves and other current or former employees pursuant
3 to procedures outlined in California Labor Code section 2699.3.

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

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

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

13 (a) The aggrieved employee or representative shall give written notice by
14 online filing with the LWDA and by certified mail to the employer of
15 the specific provisions of the California Labor Code alleged to have
16 been violated, including the facts and theories to support the alleged
17 violation.

18 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
19 2699.3(a) and any employer response to that notice shall be
20 accompanied by a filing fee of seventy-five dollars (\$75).

21 (c) The LWDA shall notify the employer and the aggrieved employee or
22 representative by certified mail that it does not intend to investigate the
23 alleged violation (“LWDA’s Notice”) within sixty (60) calendar days of
24 the postmark date of the aggrieved employee’s notice. Upon receipt of
25 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
26 (65) calendar days of the postmark date of the aggrieved employee’s
27 notice, the aggrieved employee may commence a civil action pursuant
28 to California Labor Code section 2699 to recover civil penalties.

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

- 5 (a) The aggrieved employee or representative shall give written notice by
6 online filing with the LWDA and by certified mail to the employer of
7 the specific provisions of the California Labor Code alleged to have
8 been violated (other than those listed in Section 2699.5), including the
9 facts and theories to support the alleged violation.
- 10 (b) An aggrieved employee's notice filed with the LWDA pursuant to
11 2699.3(c) and any employer response to that notice shall be
12 accompanied by a filing fee of seventy-five dollars (\$75).
- 13 (c) The employer may cure the alleged violation within thirty-three (33)
14 calendar days of the postmark date of the notice sent by the aggrieved
15 employee or representative. The employer shall give written notice
16 within that period of time by certified mail to the aggrieved employee or
17 representative and by online filing with the LWDA if the alleged
18 violation is cured, including a description of actions taken, and no civil
19 action pursuant to Section 2699 may commence. If the alleged violation
20 is not cured within the 33-day period, the aggrieved employee may
21 commence a civil action pursuant to Section 2699.

22 38. On November 10, 2020, Plaintiff provided written notice by online filing to the
23 LWDA and by Certified Mail to Defendants of the specific provisions of the California Labor
24 Code alleged to have been violated, including facts and theories to support the alleged
25 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
26 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
27 LWDA PAGA Administrator confirmed receipt of Plaintiff's written notice and assigned
28 Plaintiff PAGA Case Number LWDA-CM-812240-20. A true and correct copy of Plaintiff's

1 written notice to the LWDA and Defendants is attached hereto as “Exhibit 1.”

2 39. As of the filing date of this complaint, over 65 days have passed since Plaintiff
3 sent the notice described above to the LWDA, and the LWDA has not responded that it
4 intends to investigate Plaintiff’s claims and Defendants have not cured the violations.

5 40. Thus, Plaintiff has satisfied the administrative prerequisites under California
6 Labor Code section 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
7 violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7,
8 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401,
9 and 6403.

10 41. Labor Code section 558(a) provides “[a]ny employer or other person acting on
11 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
12 provision regulating hours and days of work in any order of the Industrial Welfare
13 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
14 dollars (\$50) for each underpaid employee for each pay period for which the employee was
15 underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each
16 underpaid employee for each pay period for which the employee was underpaid. . . .” Labor
17 Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition
18 to any other civil or criminal penalty provided by law.”

19 42. Defendants, at all times relevant to this complaint, were employers or persons
20 acting on behalf of an employer(s) who violated Plaintiff’s and other aggrieved employees’
21 rights by violating various sections of the California Labor Code as set forth above.

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

25 44. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
26 2699.3(a), 2699.3(c), and 2699.5, and section 558, Plaintiff, acting in the public interest as a
27 private attorney general, seeks assessment and collection of civil penalties for himself, all
28 other aggrieved employees, and the State of California against Defendants for violations of

California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

CLASS ACTION ALLEGATIONS

45. Plaintiff brings this action on his own behalf, as well as on behalf of each and all other persons similarly situated, and thus seeks class certification under California Code of Civil Procedure section 382.

46. All claims alleged herein arise under California law for which Plaintiff seeks relief authorized by California law.

47. Plaintiff's proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial ("Class").

48. Plaintiff's proposed subclass consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California and who received at least one wage statement within one (1) year prior to the filing of the initial complaint until the date of trial ("Subclass").

49. Members of the Class and Subclass are referred to herein as "class members."

50. Plaintiff reserves the right to redefine the Class and Subclass and to add additional subclasses as appropriate based on further investigation, discovery, and specific theories of liability.

51. There are common questions of law and fact as to class members that predominate over questions affecting only individual members, including, but not limited to:

- (a) Whether Defendants required Plaintiff and class members to work over eight (8) hours per day, over twelve (12) hours per day, or over forty (40) hours per week and failed to pay all legally required overtime compensation to Plaintiff and class members;
- (b) Whether Defendants failed to properly calculate the "regular rate" of pay on which Plaintiff's and class members' overtime rate of pay was based;

- 1 (c) Whether Defendants failed to pay Plaintiff and class members at least
2 minimum wages for all hours worked;
- 3 (d) Whether Defendants failed to provide Plaintiff and class members with
4 meal periods;
- 5 (e) Whether Defendants failed to authorize and permit Plaintiff and class
6 members to take rest periods;
- 7 (f) Whether Defendants provided Plaintiff and class members with
8 complete and accurate wage statements as required by California Labor
9 Code section 226(a);
- 10 (g) Whether Defendants maintained accurate payroll records as required by
11 California Labor Code section 1174(d);
- 12 (h) Whether Defendants failed to pay earned overtime wages, minimum
13 wages, and/or meal and rest period premium wages due to Plaintiff and
14 class members upon their discharge;
- 15 (i) Whether Defendants failed timely to pay overtime wages, minimum
16 wages, and/or meal and rest period premium wages due to Plaintiff and
17 class members during their employment;
- 18 (j) Whether Defendants unlawfully deducted a portion of wages previously
19 paid to Plaintiff and class members, in violation of Labor Code sections
20 221 and 224;
- 21 (k) Whether Defendants secretly paid Plaintiff and class members lower
22 wages than required by statute while purporting to pay the proper
23 wages, in violation of Labor Code section 223;
- 24 (l) Whether Defendants failed to provide Plaintiff and class members one
25 day's rest in seven;
- 26 (m) Whether Defendants failed to reimburse Plaintiff and class members for
27 necessary and required business-related expenditures and/or losses
28 incurred by them in the scope of their employment;

- 1 (n) Whether Defendants failed to provide written notice of information
2 material to Plaintiff's and/or class members' employment with
3 Defendants;
- 4 (o) Whether Defendants failed to provide Plaintiff and/or class members
5 with safety devices and safeguards, such as personal protective
6 equipment;
- 7 (p) Whether Defendants engaged in unlawful and unfair business practices
8 in violation of California Business & Professions Code sections 17200,
9 *et seq.*; and
- 10 (q) The appropriate amount of damages, restitution, or monetary penalties
11 resulting from Defendants' violations of California law.

12 52. There is a well-defined community of interest in the litigation and the class
13 members are readily ascertainable:

- 14 (a) Numerosity: The class members are so numerous that joinder of all
15 members would be unfeasible and impractical. The membership of the
16 entire class is unknown to Plaintiff at this time; however, the class is
17 estimated to be greater than one hundred (100) individuals and the
18 identity of such membership is readily ascertainable by inspection of
19 Defendants' employment records.
- 20 (b) Typicality: Plaintiff is qualified to, and will, fairly and adequately
21 protect the interests of each class member with whom he has a well-
22 defined community of interest, and Plaintiff's claims (or defenses, if
23 any) are typical of all class members as demonstrated herein.
- 24 (c) Adequacy: Plaintiff is qualified to, and will, fairly and adequately
25 protect the interests of each class member with whom he has a well-
26 defined community of interest and typicality of claims, as demonstrated
27 herein. Plaintiff acknowledges that he has an obligation to make known
28 to the Court any relationship, conflicts or differences with any class

1 member. Plaintiff's attorneys, the proposed class counsel, are versed in
2 the rules governing class action discovery, certification, and settlement.
3 Plaintiff has incurred, and throughout the duration of this action, will
4 continue to incur costs and attorneys' fees that have been, are, and will
5 be necessarily expended for the prosecution of this action for the
6 substantial benefit of each class member.

7 (d) Superiority: The nature of this action makes the use of class action
8 adjudication superior to other methods. A class action will achieve
9 economies of time, effort, and expense as compared with separate
10 lawsuits, and will avoid inconsistent outcomes because the same issues
11 can be adjudicated in the same manner and at the same time for the
12 entire class.

13 (e) Public Policy Considerations: Employers in the State of California
14 violate employment and labor laws every day. Current employees are
15 often afraid to assert their rights out of fear of direct or indirect
16 retaliation. Former employees are fearful of bringing actions because
17 they believe their former employers might damage their future
18 endeavors through negative references and/or other means. Class
19 actions provide the class members who are not named in the complaint
20 with a type of anonymity that allows for the vindication of their rights
21 while simultaneously protecting their privacy.

22 **FIRST CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime**

24 **(Against all Defendants)**

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

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

1 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
2 be the . . . standard conditions of labor for employees. The employment of any employee . . .
3 under conditions of labor prohibited by the order is unlawful.”

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

8 56. Specifically, the applicable IWC Wage Order provides that Defendants are and
9 were required to pay Plaintiff and class members working more than eight (8) hours in a day
10 or more than forty (40) hours in a workweek, at the rate of time and one-half (1½) for all
11 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
12 workweek.

13 57. The applicable IWC Wage Order further provides that Defendants are and were
14 required to pay Plaintiff and class members working more than twelve (12) hours in a day,
15 overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s
16 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
17 employee, including nondiscretionary bonuses and incentive pay.

18 58. California Labor Code section 510 codifies the right to overtime compensation
19 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
20 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
21 seventh (7th) day of work, and to overtime compensation at twice the employee’s regular rate
22 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
23 in a day on the seventh (7th) day of work.

24 59. During the relevant time period, Defendants willfully failed to pay all overtime
25 wages owed to Plaintiff and class members. During the relevant time period, Plaintiff and
26 class members were not paid overtime premiums for all of the hours they worked in excess of
27 eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40)
28 hours in a week, because all hours worked were not recorded.

1 60. First, Defendants had, and continue to have, a company-wide policy and/or
2 practice of understaffing their locations, while assigning heavy workloads and deadlines,
3 resulting in a failure to provide Plaintiff and other class members with adequate meal period
4 coverage. As a result of this lack of meal period coverage, Plaintiff and other class members
5 were not always afforded uninterrupted 30-minute meal periods during shifts when they were
6 entitled to receive a meal period. For example, Defendants would instruct Plaintiff to work
7 off-the-clock through part of his meal periods twice per month to unload and begin painting
8 kitchenware, in order to meet Defendants' constant trade show and customer order deadlines.
9 As a further example, Plaintiff had to forego his meal periods entirely when assigned to install
10 and dismantle Defendants' trade show displays. Moreover, Defendants had a practice of
11 failing schedule meal periods, which further caused Plaintiff and class members to not be
12 relieved of their duties for compliant meal periods.

13 61. Additionally, on information and belief, because Defendants frowned upon
14 employees accruing meal period penalties, Defendants' management would adjust Plaintiff's
15 and class members' time records to reflect compliant meal periods, regardless of whether they
16 had actually received a compliant meal period, in order to strictly limit meal penalties that
17 Defendants would otherwise owe. Consequently, Plaintiff and class members performed work
18 during meal periods for which they were not paid.

19 62. Second, Defendants had, and continue to have, a policy and/or practice of
20 designating areas at their locations through which employees must first pass through and be
21 authorized by Defendants' management, in order to utilize the timekeeping system and clock
22 in for their shifts. Before clocking in for their shifts, Plaintiff and class members were
23 required to wait in line and receive supervisor authorization to clock in using the company's
24 timekeeping system. Plaintiff and class members waited in line off-the-clock, for five (5)
25 minutes per instance, to clock into their shifts at the start of the day, but Defendants did not
26 compensate them for the time they remained under Defendants' control. Furthermore, when
27 some employees arrived late to work, after the morning meeting had started, they were
28 required to wait until this meeting had concluded in order to clock into work, time that they

1 spent under the control of Defendants for which they were not paid.

2 63. Moreover, Defendants had, and continue to have, a loss prevention policy
3 requiring Plaintiff and class members to undergo security checks at the beginning of their
4 meal periods and at the end of their shifts before leaving the premises. Prior to taking their
5 meal periods and at the end of their shifts, Plaintiff and class members were required to wait
6 off-the-clock to undergo a security check before they could leave Defendants' facilities. For
7 example, each shift, Plaintiff was required to spend 5-10 minutes of the beginning of his meal
8 period and after the end of his shift waiting for and undergoing security searches. Some
9 employees were also required to undergo security checks of their personal vehicles, after
10 clocking out at the end of their scheduled shifts. As a result, Plaintiff and class members were
11 subject to Defendants' control until being released by a security guard, but were not
12 compensated for this time.

13 64. Third, during the relevant period, Defendants had, and continue to have, a
14 company-wide policy and/or practice of requiring employees to complete work-related tasks
15 while off-the-clock, such as responding to calls from Defendants' management or traveling to
16 off-site work locations. Plaintiff and class members were required to use their personal
17 cellular phones to complete their work-related tasks, such as discussing completed tasks with
18 Defendants' managers at all times, including before and after shifts. For example, Plaintiff
19 would receive calls three (3) times per month and spend about five (5) minutes each time
20 communicating with his supervisor off-the-clock via telephone. Furthermore, Plaintiff and
21 other class members were required to travel to different cities in connection with their work-
22 related duties, but were not paid for the time they spent traveling to and from these cities.
23 Twice per year, Plaintiff would be required to travel to Las Vegas, Nevada, and spent up to
24 ten (10) hours traveling to and from trade shows, in order to install and dismantle Defendants'
25 trade show displays. Defendants failed to track all of this time spent responding to phone
26 calls and traveling in connection with their work-related duties, and Plaintiff and class
27 members received no compensation for this time.

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

1 practices and/or policies, Plaintiff and class members were performing their assigned duties
2 off-the-clock before and after their shifts and during meal periods, and were suffered or
3 permitted to perform work for which they were not paid. Because Plaintiff and class members
4 worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this
5 off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff and class
6 members were not paid overtime wages for all of the overtime hours they actually worked.

7 66. Furthermore, Defendants did not pay Plaintiff and class members the correct
8 overtime rate for the recorded overtime hours that they generated. In addition to an hourly
9 wage, Defendants paid Plaintiff and class members incentive pay, nondiscretionary bonuses,
10 and/or other forms of remuneration. However, in violation of the California Labor Code,
11 Defendants failed to incorporate all compensation, including but not limited to, all incentive
12 pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the
13 regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during
14 times when Plaintiff and class members worked overtime and received these other forms of
15 pay, Defendants failed to pay all overtime wages by paying a lower overtime rate than
16 required.

17 67. Defendants' failure to pay Plaintiff and class members the balance of overtime
18 compensation as required by California law, violates the provisions of California Labor Code
19 sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff and class
20 members are entitled to recover their unpaid overtime compensation, as well as interest, costs,
21 and attorneys' fees.

22 **SECOND CAUSE OF ACTION**

23 **Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid** 24 **Minimum Wages** 25 **(Against all Defendants)**

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

28 69. At all relevant times, California Labor Code sections 1182.12, 1194, 1197,

1 1197.1, and 1198 provide that the minimum wage for employees fixed by the IWC is the
2 minimum wage to be paid to employees, and the payment of a wage less than the minimum so
3 fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as “the time
4 during which an employee is subject to the control of an employer, and includes all the time
5 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
6 Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

7 70. As stated above, due to Defendants’ practice of understaffing, assignment of
8 heavy workloads and deadlines, failure to schedule meal periods, and subsequent lack of meal
9 period coverage, Plaintiff and class members were impeded from taking all uninterrupted meal
10 periods to which they were entitled and were required to work off-the-clock. Additionally, as
11 set forth above, Defendants systematically failed to pay Plaintiff and class members for actual
12 hours worked during unpaid meal periods, because these hours were not always correctly
13 recorded. In addition, as stated above, Defendants required Plaintiff and class members to
14 wait in line and be authorized by a supervisor prior to clocking in, wait after morning
15 meetings had concluded before clocking in, undergo security checks or vehicle checks after
16 clocking out, and/or complete work-related tasks off-the-clock, but failed to compensate them
17 for this time.

18 71. Defendants did not pay minimum wages for off-the-clock hours that Plaintiff
19 and class members worked through that qualified for overtime premium payment. To the
20 extent that these off-the-clock hours did not qualify for overtime premium payment,
21 Defendants did not pay at least minimum wages for those hours worked off-the-clock in
22 violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

23 72. Defendants’ failure to pay Plaintiff and class members minimum wages violates
24 California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to
25 California Labor Code section 1194.2, Plaintiff and class members are entitled to recover
26 liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

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THIRD CAUSE OF ACTION
Violations of California Labor Code, §§ 226.7, 512(a), 516, and 1198—Meal Period
Violations
(Against all Defendants)

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

74. At all relevant times herein set forth, California Labor Code section 512(a) provides that an employer may not require, cause, or permit an employee to work for a period of more than five (5) hours per day without providing the employee with a meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012).

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

76. At all relevant times herein set forth, Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee’s regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

77. First, as stated, Defendants had, and continue to have, a company-wide policy of understaffing, assigning heavy workloads and deadlines, and failing to schedule meal periods, which prevented Plaintiff and class members from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Plaintiff and class members had to work through part or all of their meal periods, have their meal periods interrupted, and wait

1 extended periods of time before taking meal periods. For example, Plaintiff had to forego his
2 meal periods entirely, when assigned to install and dismantle Defendants' trade show displays.
3 As a further example, Defendants instructed Plaintiff to work through part of his meal periods
4 two (2) times per month to unload and paint kitchenware in order to meet Defendants'
5 constant trade show and customer order deadlines.

6 78. Moreover, as stated, on information and belief, because Defendants frowned
7 upon employees accruing meal period penalties, Defendants' management would adjust
8 Plaintiff's and class members' time records to reflect compliant meal periods, regardless of
9 whether they had received a compliant meal period, in order to strictly limit meal penalties
10 that Defendants would otherwise owe.

11 79. Second, as stated, Defendants required their employees to be subject to loss
12 prevention policies, which resulted in Plaintiff and class members receiving shortened meal
13 periods, because they were required to undergo mandatory security checks before leaving the
14 premises. For example, two (2) times per week, when Plaintiff intended to take his meal
15 period off-premises, he was required to spend 5-10 minutes waiting off-the-clock during his
16 meal period for and undergoing a security check before Defendants permitted him to leave.

17 80. In addition, during the relevant time period, Defendants did not provide
18 Plaintiff and class members with second 30-minute meal periods on days that they worked in
19 excess of ten (10) hours in one day. For example, four (4) times per week, Plaintiff would
20 work shifts in excess of ten (10) hours per day, but was not provided second meal periods
21 during these shifts. Plaintiff and class members did not sign valid meal period waivers on
22 days that they were entitled to meal periods and were not relieved of all duties.

23 81. At all times herein mentioned, Defendants knew or should have known that, as
24 a result of these policies, Plaintiff and class members were prevented from being relieved of
25 all duties and required to perform some of their assigned duties during meal periods.
26 Defendants further knew or should have known that Defendants did not pay Plaintiff and class
27 members meal period premium wages when meal periods were late, interrupted, shortened, or
28 missed.

1 82. Furthermore, Defendants engaged in a company-wide practice and/or policy of
2 not paying all meal period premiums owed when compliant meal periods are not provided.
3 Because of this practice and/or policy, Plaintiff and class members have not received premium
4 pay for missed, late, and interrupted meal periods. Alternatively, to the extent that Defendants
5 did pay Plaintiff and class members premium pay for missed, late, and interrupted meal
6 periods, Defendants did not pay Plaintiff and class members at the correct rate of pay for
7 premium wages because Defendants systematically failed to include all forms of
8 compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of
9 remuneration, in the regular rate of pay. As a result, Defendants failed to provide Plaintiff and
10 class members compliant meal periods in violation of California Labor Code sections 226.7,
11 512, and 516 and failed to pay the full meal period premiums due.

12 83. Defendants' conduct violates the applicable IWC Wage Order, and California
13 Labor Code sections 226.7, 512(a), 516, and 1198. Plaintiff and class members are therefore
14 entitled to recover from Defendants one (1) additional hour of pay at the employee's regular
15 rate of compensation for each work day that the meal period was not provided.

16 **FOURTH CAUSE OF ACTION**

17 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 18 **(Against all Defendants)**

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

21 85. At all relevant times herein set forth, the applicable IWC Wage Order and
22 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and class
23 members' employment by Defendants.

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

1 (3½) hours.

2 87. At all relevant times, California Labor Code section 226.7 provides that no
3 employer shall require an employee to work during any rest period mandated by an applicable
4 order of the California IWC. To comply with its obligation to authorize and permit rest
5 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
6 employer must “relinquish any control over how employees spend their break time, and
7 relieve their employees of all duties—including the obligation that an employee remain on
8 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
9 *Inc.*, 2 Cal. 5th 257, 269-270 (2016). Pursuant to the applicable IWC Wage Order and
10 California Labor Code section 226.7(c), Plaintiff and class members are entitled to recover
11 from Defendants one (1) additional hour of pay at their regular rates of pay for each work day
12 that a required rest period was not authorized and permitted.

13 88. During the relevant time period, Defendants regularly failed to authorize and
14 permit Plaintiff and class members to take a ten (10) minute rest period per each four (4) hour
15 period worked or major fraction thereof. As with meal periods, Defendants’ company-wide
16 policy and/or practice of understaffing and assigning heavy workloads and deadlines
17 prevented Plaintiff and class members from being relieved of all duty in order to take
18 compliant rest periods. Defendants also failed to adhere to a schedule of rest periods, which,
19 coupled with Defendants’ failure to provide adequate rest period coverage, further led to
20 Plaintiff and class members not being authorized and permitted to take rest periods.

21 89. Furthermore, upon information and belief, during the relevant time period,
22 Defendants maintained a company-wide practice and/or policy effectively requiring that
23 Plaintiff and class members remain on Defendants’ premises during their rest periods. As
24 stated, Plaintiff and class members were subject to security searches, and thus were required
25 to wait for a security guard to perform a security check whenever they wished to leave the
26 premises, resulting in rest periods that would be cut short by 5-10 minutes. Because Plaintiff
27 and class members were implicitly restricted from leaving Defendants’ premises during rest
28 periods, they were denied the ability to use their rest periods freely for their own purposes.

1 Thus, Defendants effectively maintained control over Plaintiff and class members during rest
2 periods, and, as a result of this rest period policy, Defendants did not relinquish control over
3 Plaintiff and class members during rest periods.

4 90. As a result of Defendants' practices and policies, Plaintiff and class members
5 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
6 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,
7 Plaintiff missed rest periods two (2) times per week in order to complete all of the work-
8 related duties Defendants assigned to him. Additionally, Plaintiff did not receive a third rest
9 period when working shifts in excess of 10 hours.

10 91. Defendants have also engaged in a company-wide practice and/or policy of not
11 paying all rest period premiums owed when compliant rest periods are not authorized and
12 permitted. Alternatively, to the extent that Defendants did pay Plaintiff and class members
13 one (1) additional hour of premium pay for missed rest periods, Defendants did not pay
14 Plaintiff and class members at the correct rate of pay for premium wages because Defendants
15 failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses,
16 and/or other forms of remuneration, in the regular rate of pay. As a result, Defendants denied
17 Plaintiff and class members rest periods and failed to pay them rest period premium wages
18 due, in violation of Labor Code section 226.7, 516, and the applicable IWC Wage Order.

19 92. Defendants' conduct violates the applicable IWC Wage Order and California
20 Labor Code sections 226.7, 516, and 1198. Plaintiff and class members are therefore entitled
21 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
22 compensation for each work day that a compliant rest period was not authorized and
23 permitted.

24 **FIFTH CAUSE OF ACTION**

25 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 26 **Statements and Failure to Maintain Accurate Payroll Records** 27 **(Against all Defendants)**

28 93. Plaintiff incorporates by reference and re-alleges as if fully stated herein each

1 and every allegation set forth above.

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

7 95. At all relevant times, Defendants have knowingly and intentionally provided
8 Plaintiff and Subclass members with uniform, incomplete, and inaccurate wage statements.
9 For example, Defendants issued uniform wage statements to Plaintiff and Subclass members
10 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all
11 applicable hourly rates in effect during the pay period, including overtime rates of pay, and
12 the corresponding number of hours worked at each hourly rate. Specifically, Defendants
13 violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

14 96. Because Defendants did not record the time Plaintiff and Subclass members
15 spent working off-the-clock and deducted time from their records for meal periods that were
16 interrupted and/or missed (and therefore time for which they should have been paid),
17 Defendants did not list the correct amount of gross wages and net wages earned by Plaintiff
18 and Subclass members in compliance with section 226(a)(1) and section 226(a)(5),
19 respectively. For the same reason, Defendants failed to accurately list the total number of
20 hours worked by Plaintiff and Subclass members, in violation of section 226(a)(2), and failed
21 to list the applicable hourly rates of pay in effect during the pay period and the corresponding
22 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9)).

23 97. Additionally, because Defendants did not calculate Plaintiff's and Subclass
24 members' regular rate of pay correctly for purposes of paying overtime, Defendants did not
25 list the correct amount of gross wages earned by Plaintiff and Subclass members in
26 compliance with section 226(a)(1). For the same reason, Defendants failed to list the correct
27 amount of net wages earned by Plaintiff and Subclass members in violation of section
28 226(a)(5). Defendants also failed to correctly list all applicable hourly rates in effect during

1 the pay period, namely, correct overtime rates of pay and correct rates of pay for premium
2 wages, in violation of section 226(a)(9).

3 98. The wage statement deficiencies also include, among other things, failing to list
4 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
5 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and
6 only the last four digits of his or her social security number or an employee identification
7 number other than a social security number; failing to list the name and address of the legal
8 entity that is the employer; failing to list the inclusive dates of the period for which class
9 members were paid; and/or failing to state all hours worked as a result of not recording or
10 stating the hours they worked off-the-clock.

11 99. California Labor Code section 1198 provides that the maximum hours of work
12 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
13 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
14 employment of any employees for longer hours than those fixed by the order or under
15 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
16 Wage Order, employers are required to keep accurate time records showing when the
17 employee begins and ends each work period and meal period. During the relevant time
18 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
19 and meal period start and stop times for Plaintiff and Subclass members, in violation of
20 section 1198. As stated, Defendants engaged in a company-wide practice and/or policy of
21 falsifying Plaintiff’s and Subclass members’ time records by recording that compliant meal
22 periods were taken regardless of if or when meal periods were actually taken, and thereby
23 failed to keep accurate records of meal start and end times for Plaintiff and Subclass members.
24 Furthermore, in light of Defendants’ failure to provide Plaintiff and Subclass members with
25 second 30-minute meal periods to which they were entitled, Defendants kept no records of
26 meal start and end times for second meal periods.

27 100. California Labor Code section 1174(d) provides that “[e]very person employing
28 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees

1 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
2 plants or establishments at which employees are employed, payroll records showing the hours
3 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
4 applicable piece rate paid to, employees employed at the respective plants or
5 establishments. . . .” At all relevant times, and in violation of Labor Code section 1174(d),
6 Defendants willfully failed to maintain accurate payroll records for Plaintiff and Subclass
7 members showing the daily hours they worked and the wages paid thereto as a result of failing
8 to record the off-the-clock hours that they worked.

9 101. Plaintiff and Subclass members are entitled to recover from Defendants the
10 greater of their actual damages caused by Defendants’ failure to comply with California Labor
11 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
12 employee.

13 **SIXTH CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid** 15 **Upon Termination** 16 **(Against all Defendants)**

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

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

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

1 Plaintiff was terminated on or around June 18, 2020, but did not receive his final wages from
2 Defendants until on or about June 24, 2020. Thus, Defendants failed to pay Plaintiff his final
3 wages immediately, in violation of Labor Code section 201.

4 105. Additionally, Defendants willfully failed to pay Plaintiff and class members
5 who are no longer employed by Defendants the earned and unpaid wages set forth above,
6 including but not limited to, overtime wages, minimum wages, and/or meal and rest period
7 premium wages either at the time of discharge, or within seventy-two (72) hours of their
8 leaving Defendants' employ.

9 106. Defendants' failure to pay Plaintiff and class members who are no longer
10 employed by Defendants their wages earned and unpaid at the time of discharge, or within
11 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
12 and 202. Plaintiff and class members are therefore entitled to recover from Defendants the
13 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
14 thirty (30) day maximum pursuant to California Labor Code section 203.

15 SEVENTH CAUSE OF ACTION

16 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 17 **Employment** 18 **(Against all Defendants)**

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

21 108. This cause of action is dependent upon, and wholly derivative of, the overtime
22 wages, minimum wages, and/or meal and rest period premium wages that were not timely paid
23 to Plaintiff and those class members.

24 109. At all times relevant herein set forth, Labor Code section 204 provides that all
25 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
26 days, inclusive, of any calendar month, other than those wages due upon termination of an
27 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
28 the month during which the labor was performed.

110. At all times relevant herein, Labor Code section 204 provides that all wages earned by any person in any employment between the sixteenth (16th) and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the first (1st) and the tenth (10th) day of the following month.

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

112. During the relevant time period, Defendants willfully failed to pay Plaintiff and class members all wages due including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages within the time periods specified by California Labor Code section 204.

113. Defendants' failure to pay Plaintiff and class members all wages due violates Labor Code section 204. Plaintiff and class members are therefore entitled to recover from Defendants the statutory penalty wages pursuant to California Labor Code section 210.

EIGHTH CAUSE OF ACTION

Violation of California Labor Code §§ 551, 552, and 558—Failure to Provide One Day's Rest in Seven (Against all Defendants)

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

115. At all relevant times herein, California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. Additionally, California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest.

116. At all relevant times herein set forth, California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

117. Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . .” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

118. During the relevant time period, on information and belief, Defendants sometimes scheduled Plaintiff and class members to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. Because Plaintiff and class members worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Plaintiff and class members may have signed purported waivers of their right to a day’s rest in seven, such waivers are invalid.

119. Thus, during the relevant time period, and in violation of Labor Code sections 551 and 552, Defendants willfully caused Plaintiff and class members to work more than six days in seven. Plaintiff and class members are therefore entitled to recover civil penalties pursuant to Labor Code section 558.

NINTH CAUSE OF ACTION

Violation of California Labor Code § 2802—Unpaid Business-Related Expenses (Against all Defendants)

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

121. At all times herein set forth, California Labor Code section 2802 provides that

1 an employer must reimburse employees for all necessary expenditures and losses incurred by
2 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
3 to prevent employers from passing off their cost of doing business and operating expenses on
4 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
5 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or
6 equipment are required by the employer or are necessary to the performance of a job, such
7 tools and equipment shall be provided and maintained by the employer, except that an
8 employee whose wages are at least two (2) times the minimum wage provided herein may be
9 required to provide and maintain hand tools and equipment customarily required by the trade
10 or craft."

11 122. During the relevant time period, Defendants, on a company-wide basis, required
12 that Plaintiff and class members use their own personal cellular phones and/or cellular data to
13 carry out their job duties, but failed to reimburse them for the costs of their work-related
14 cellular phone expenses. As stated, Plaintiff and class members were required to use their
15 personal cellular phones to complete their work-related tasks, such as discussing work-related
16 matters with supervisors off-the-clock. For example, as stated, Defendants required Plaintiff
17 to respond to calls from his manager on his personal cellular phone to discuss details about his
18 previous shifts. Although Defendants required Plaintiff and class members to utilize their
19 personal cellular phones to carry out their work-related responsibilities, Defendants failed to
20 fully reimburse them for this cost.

21 123. Defendants could have provided Plaintiff and class members with the actual
22 tools for use on the job, such as company phones, or Defendants could have fully reimbursed
23 employees for their cellular phone expenses. Instead, Defendants passed these operating costs
24 off onto Plaintiff and class members. At all relevant times, Plaintiff did not earn at least two
25 (2) times the minimum wage.

26 124. Defendants' company-wide policy and/or practice of passing on their operating
27 costs to Plaintiff and class members violates California Labor Code section 2802. Defendants
28 have intentionally and willfully failed to reimburse Plaintiff and other class members for

1 necessary business-related expenses and costs.

2 125. Plaintiff and class members are entitled to recover from Defendants their
3 business-related expenses incurred during the course and scope of their employment, plus
4 interest.

5 **TENTH CAUSE OF ACTION**

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

7 **(Against all Defendants)**

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

10 127. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiff to recover
11 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
12 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
13 221, 223, 224, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, and 2802.
14 Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiff, to recover
15 civil penalties for violations of those Labor Code sections not found in section 2699.5,
16 including sections 516, 1182.12, 2810.5, 6401, and 6403.

17 128. Defendants’ conduct, as alleged herein, violates numerous sections of the
18 California Labor Code, including, but not limited to, the following:

- 19 (f) Violation of Labor Code sections 510, 1198, and the applicable IWC
20 wage order for Defendants’ failure to compensate Plaintiff and other
21 aggrieved employees with all required overtime pay and failure to
22 properly calculate the overtime rates paid to Plaintiff and other
23 aggrieved employees, as alleged herein;
- 24 (g) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, 1198,
25 and the applicable IWC wage order for Defendants’ failure to
26 compensate Plaintiff and other aggrieved employees with at least
27 minimum wages for all hours worked, as alleged herein;
- 28 (h) Violation of Labor Code sections 226.7, 512, 516, 1198, and the

1 applicable IWC wage order for Defendants' failure to provide Plaintiff
2 and other aggrieved employees with meal periods, as alleged herein;

3 (i) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
4 IWC wage order for Defendants' failure to authorize and permit
5 Plaintiff and other aggrieved employees to take rest periods, as alleged
6 herein;

7 (j) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
8 wage order for failure to provide accurate and complete wage statements
9 to Plaintiff and other aggrieved employees, as alleged herein;

10 (k) Violation of Labor Code sections 1174(d), 1198, and the applicable
11 IWC wage order for failure to maintain payroll records as alleged
12 herein;

13 (l) Violation of Labor Code sections 201, 202, and 203 for failure to pay all
14 earned wages upon termination, as alleged herein;

15 (m) Violation of Labor Code section 204 for failure to pay all earned wages
16 during employment, as alleged herein;

17 (n) Violation of Labor Code sections 221 and 224 for unlawfully deducting
18 a portion of wages previously paid to Plaintiff and other aggrieved
19 employees, as set forth below;

20 (o) Violation of Labor Code section 223 for secretly paying Plaintiff and
21 other aggrieved employees lower wages than required by statute, while
22 purporting to pay the proper wages, as set forth below;

23 (p) Violation of Labor Code sections 551 and 552 for failure to provide one
24 day's rest in seven to Plaintiff and other aggrieved employees, as
25 alleged herein;

26 (q) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
27 and other aggrieved employees for all business expenses necessarily
28 incurred, as alleged herein;

- 1 (r) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to
2 provide written notice of information material to other aggrieved
3 employees' employment with Defendants, as set forth below; and
4 (s) Violation of Labor Code sections 6401 and 6403 for failure to provide
5 safety devices and safeguards, such as personal protective equipment, to
6 other aggrieved employees, as set forth below.

7 129. At all times relevant herein, California Labor Code section 221 provides that it
8 shall be unlawful for any employer to collect or receive from an employee any part of wages
9 theretofore paid by said employer to said employee. California Labor Code section 224 also
10 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a
11 deduction is expressly authorized in writing by the employee."

12 130. During the relevant time period, Defendants unlawfully deducted a portion of
13 wages previously paid to Plaintiff and other aggrieved employees in violation of California
14 Labor Code section 221. Defendants systematically, and on a company-wide basis, took
15 money out of Plaintiff's and other aggrieved employees' pay. On information and belief, such
16 deductions were not expressly authorized in writing by Plaintiff and other aggrieved
17 employees. Thus, Defendants' company-wide policy and/or practice of deducting money
18 from Plaintiff's and other aggrieved employees' paychecks without their written authorization
19 constitutes an unlawful deduction of wages, in violation of California Labor Code sections
20 221 and 224.

21 131. Defendants' conduct as alleged herein violates California Labor Code sections
22 221 and 224. Plaintiff and other aggrieved employees are therefore entitled to recover civil
23 penalties pursuant to Labor Code sections 225.5 and/or 2699(a), (f), and (g).

24 132. At all times, California Labor Code section 223 makes it unlawful for an
25 employer to secretly pay wages lower than required by statute while purporting to pay legal
26 wages.

27 133. During the relevant time period, on information and belief, Defendants
28 willfully and systematically deducted money from Plaintiff's and other aggrieved employees'

1 wages without their express written authorization, which resulted in a discount in their wages.
2 Defendants' deduction from their employees' wages resulted in the payment of less than
3 statutorily required wages to Plaintiff and other aggrieved employees. In doing so,
4 Defendants acted with the intent to deprive Plaintiff and other aggrieved employees of
5 statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal
6 and rest period premiums, to which they were entitled to under California law. Thus,
7 Defendants paid Plaintiff and other aggrieved employees lower wages than those they were
8 entitled to, while purporting that Plaintiff and class members were properly paid.

9 134. Defendants' failure to pay Plaintiff and other aggrieved employees the correct
10 designated wage, while purporting to pay legal wages, is a violation of California Labor Code
11 section 223. Plaintiff and other aggrieved employees are therefore entitled to recover civil
12 penalties pursuant to sections 225.5 and/or 2699(a), (f), and (g).

13 135. California's Wage Theft Prevention Act was enacted to ensure that employers
14 provide employees with basic information material to their employment relationship at the
15 time of hiring, and to ensure that employees are given written and timely notice of any
16 changes to basic information material to their employment. Codified at California Labor
17 Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an
18 employer must provide written notice to employees containing basic and material payroll
19 information, including, among other things, the rate(s) of pay and basis thereof, whether paid
20 by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for
21 overtime, the regular payday designated by the employer, and any allowances claims as part
22 of the minimum wage, including meal or lodging allowances. Labor Code section
23 2810.5(a)(1)(A)-(C).

24 136. During the relevant time period, Defendants failed to provide other aggrieved
25 employees with written notice that lists all the requisite information set forth in Labor Code
26 section 2810.5(a)(1)(A)-(C). Defendants' failure to provide other aggrieved employees with
27 written notice of basic information regarding their employment with Defendants is in violation
28 of Labor Code section 2810.5. Other aggrieved employees are therefore entitled to recover

1 civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

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

10 138. Defendants, on a company-wide basis, failed to provide other aggrieved
11 employees with safety devices and safeguards such as steel-toed boots and safety vests, to
12 keep them safe in the workplace. Instead, Defendants sometimes required other aggrieved
13 employees to purchase these items from a specific vendor, and other aggrieved employees
14 purchased steel-toed boots and safety vests, including replacement boots and vests, to wear
15 inside Defendants' facilities. Despite the fact that Defendants required employees to wear
16 certain personal protective equipment, Defendants failed to provide such reasonably necessary
17 equipment to other aggrieved employees to keep them safe.

18 139. Defendants' failure to provide other aggrieved employees with safety devices
19 and safeguards for the workplace violates Labor Code sections 6401 and 6403. Other
20 aggrieved employees are therefore entitled to recover civil penalties pursuant to Labor Code
21 sections 2699(a), (f), and (g).

22 **ELEVENTH CAUSE OF ACTION**

23 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

24 **Unlawful Business Practices**

25 **(Against all Defendants)**

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

28 141. Defendants are "persons" as defined by California Business & Professions

Code sections 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

142. Defendants' conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered injury in fact and has lost money as a result of Defendants' unlawful business practices. Plaintiff seeks to enforce important rights affecting the public interest within the meaning of Code of Civil Procedure section 1021.5.

143. Defendants' activities, as alleged herein, are violations of California law, and constitute unlawful business acts and practices in violation of California Business & Professions Code sections 17200, *et seq.*

144. A violation of California Business & Professions Code sections 17200, *et seq.* may be predicated on the violation of any state or federal law. In the instant case, Defendants' policies and practices have violated state law in at least the following respects:

- (a) Requiring non-exempt, hourly paid employees, including Plaintiff and class members, to work overtime without paying them proper compensation in violation of California Labor Code sections 510 and 1198 and the applicable IWC Order, and paying Plaintiff and class members overtime at a lower rate than required by law by failing to properly calculate the regular rate of pay for purposes of overtime, as alleged herein;
- (b) Failing to pay at least minimum wage to Plaintiff and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 and the applicable IWC Order, as alleged herein;
- (c) Failing to provide uninterrupted meal periods to Plaintiff and class members in violation of California Labor Code sections 226.7, 512(a), 516, 1198, and the applicable IWC Order, as alleged herein;
- (d) Failing to authorize and permit Plaintiff and class members to take uninterrupted rest periods in violation of California Labor Code sections

- 1 226.7, 516, 1198, and the applicable IWC Order, as alleged herein;
- 2 (e) Failing to provide Plaintiff and class members with accurate wage
- 3 statements and failing to maintain accurate payroll records in violation
- 4 of California Labor Code sections 226(a), 1174(d), 1198, and the
- 5 applicable IWC Order, as alleged herein;
- 6 (f) Failing timely to pay all earned wages to Plaintiff and class members in
- 7 violation of California Labor Code section 204 and the applicable IWC
- 8 Order, as alleged herein;
- 9 (g) Collecting or receiving wages already paid from Plaintiff and class
- 10 members in violation of California Labor Code sections 221 and 224, as
- 11 set forth below;
- 12 (h) Failing to pay the statutorily designated wage scale in violation of
- 13 California Labor Code section 223, as set forth below;
- 14 (i) Failing to provide one day's rest in seven to Plaintiff and class members
- 15 in violation of California Labor Code sections 551 and 552, as alleged
- 16 herein; and
- 17 (j) Failing to reimburse Plaintiff and class members for all business
- 18 expenses necessarily incurred in violation of California Labor Code
- 19 sections 2802, as alleged herein.

20 145. At all times relevant herein, California Labor Code section 221 provides that it

21 is unlawful for any employer to collect or receive from an employee any part of wages

22 theretofore paid by said employer to said employee. California Labor Code section 224 also

23 provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a

24 deduction is expressly authorized in writing by the employee."

25 146. During the relevant time period, Defendants unlawfully deducted a portion of

26 wages previously paid to Plaintiff and class members in violation of California Labor Code

27 section 221. Defendants systematically, and on a company-wide basis, took money out of

28 Plaintiff's and class members' pay. On information and belief, such deductions were not

1 expressly authorized in writing by Plaintiff and class members. Thus, Defendants' company-
2 wide policy and/or practice of deducting money from Plaintiff's and class members'
3 paychecks without their written authorization constitutes an unlawful deduction of wages, in
4 violation of California Labor Code sections 221 and 224.

5 147. At all times, California Labor Code section 223 makes it unlawful for an
6 employer to secretly pay wages lower than required by statute while purporting to pay legal
7 wages.

8 148. During the relevant time period, on information and belief, Defendants
9 willfully and systematically deducted money from Plaintiff's and class members' wages
10 without their express written authorization, which resulted in a discount in their wages.
11 Defendants' deduction from their employees' wages resulted in the payment of less than
12 statutorily required wages to Plaintiff and class members. In doing so, Defendants acted with
13 the intent to deprive Plaintiff and class members of statutory wages, including, but not limited
14 to, overtime wages, minimum wages, and/or meal and rest period premiums, to which they
15 were entitled to under California law. Thus, Defendants paid Plaintiff and class members
16 lower wages than those they were entitled to, while purporting that Plaintiff and class
17 members were properly paid.

18 149. Defendants' failure to pay Plaintiff and class members the correct designated
19 wage, while purporting to pay legal wages, is a violation of California Labor Code section
20 223.

21 150. As a result of the violations of California law herein described, Defendants
22 unlawfully gained an unfair advantage over other businesses. Plaintiff and class members
23 have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged
24 herein.

25 151. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
26 Plaintiff and class members are entitled to restitution of the wages withheld and retained by
27 Defendants during a period that commences four years prior to the filing of this complaint; a
28 permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiff and

1 class members; and an award of attorneys’ fees pursuant to California Code of Civil
2 Procedure section 1021.5 and other applicable laws; and an award of costs.

3 **TWELFTH CAUSE OF ACTION**

4 **Violation of California Business & Professions Code §§ 17200, et seq. –**
5 **Unfair Business Practices**
6 **(Against all Defendants)**

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

9 153. Defendants are “persons” as defined by California Business & Professions
10 Code sections 17201, as they are corporations, firms, partnerships, joint stock companies,
11 and/or associations.

12 154. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
13 and harmful to Plaintiff, class members, and to the general public. Plaintiff has suffered
14 injury in fact and has lost money as a result of Defendants’ unfair business practices. Plaintiff
15 seeks to enforce important rights affecting the public interest within the meaning of Code of
16 Civil Procedure section 1021.5.

17 155. Defendants’ activities, namely Defendants’ company-wide practice and/or
18 policy of not paying Plaintiff and class members all meal and rest period premium wages due
19 to them under Labor Code section 226.7, deprived Plaintiff and class members of the
20 compensation guarantee and enhanced enforcement implemented by section 226.7. The
21 statutory remedy provided by section 226.7 is a “‘dual-purpose’ remedy intended primarily to
22 compensate employees, and secondarily to shape employer conduct. *Safeway, Inc. v. Superior*
23 *Court*, 238 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were
24 guaranteed to Plaintiff and class members as part of their employment with Defendants, and
25 thus Defendants’ practice and/or policy of denying these statutory benefits constitutes an
26 unfair business practice in violation of California Business & Professions Code sections
27 17200, *et seq. (Id.)*

28 156. A violation of California Business & Professions Code sections 17200, *et seq.*

1 may be predicated on any unfair business practice. In the instant case, Defendants' policies
2 and practices have violated the spirit of California's meal and rest period laws and constitute
3 acts against the public policy behind these laws.

4 157. Pursuant to California Business & Professions Code sections 17200 *et seq.*,
5 Plaintiff and class members are entitled to restitution for the class-wide loss of the statutory
6 benefits implemented by section 226.7 withheld and retained by Defendants during a period
7 that commences four years prior to the filing of this complaint; a permanent injunction
8 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
9 Plaintiff and class members; an award of attorneys' fees pursuant to California Code of Civil
10 Procedure section 1021.5 and other applicable laws; and an award of costs.

11 **REQUEST FOR JURY TRIAL**

12 Plaintiff requests a trial by jury.

13 **PRAYER FOR RELIEF**

14 Plaintiff, on behalf of all others similarly situated, prays for relief and judgment
15 against Defendants, jointly and severally, as follows:

16 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
17 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiff
18 reserves the right to amend his prayer for relief to seek a different amount.

19 **Class Certification**

- 20 2. That this case be certified as a class action;
21 3. That Plaintiff be appointed as the representative of the Class and Subclass;
22 4. That counsel for Plaintiff be appointed as class counsel.

23 **As to the First Cause of Action**

24 5. That the Court declare, adjudge, and decree that Defendants violated California
25 Labor Code sections 510 and 1198 and applicable IWC Wage Orders by willfully failing to
26 pay all overtime wages due to Plaintiff and class members;

27 6. For general unpaid wages at overtime wage rates and such general and special
28 damages as may be appropriate;

1 7. For pre-judgment interest on any unpaid overtime compensation commencing
2 from the date such amounts were due, or as otherwise provided by law;

3 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
4 California Labor Code section 1194(a); and

5 9. For such other and further relief as the Court may deem equitable and
6 appropriate.

7 **As to the Second Cause of Action**

8 10. That the Court declare, adjudge and decree that Defendants violated California
9 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 by willfully failing to pay
10 minimum wages to Plaintiff and class members;

11 11. For general unpaid wages and such general and special damages as may be
12 appropriate;

13 12. For pre-judgment interest on any unpaid compensation from the date such
14 amounts were due, or as otherwise provided by law;

15 13. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
16 California Labor Code section 1194(a);

17 14. For liquidated damages pursuant to California Labor Code section 1194.2; and

18 15. For such other and further relief as the Court may deem equitable and
19 appropriate.

20 **As to the Third Cause of Action**

21 16. That the Court declare, adjudge, and decree that Defendants violated California
22 Labor Code sections 226.7, 512(a), 516, and 1198 and applicable IWC Wage Order(s) by
23 willfully failing to provide all meal periods to Plaintiff and class members;

24 17. That the Court make an award to the Plaintiff and class members of one (1)
25 hour of pay at each employee's regular rate of pay for each workday that a meal period was
26 not provided;

27 18. For all actual, consequential, and incidental losses and damages, according to
28 proof;

19. For premiums pursuant to California Labor Code section 226.7(c);

20. For pre-judgment interest on any unpaid meal period premiums from the date such amounts were due, or as otherwise provided by law;

21. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

22. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fourth Cause of Action

23. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 226.7, 516, and 1198 and applicable IWC Wage Orders by willfully failing to authorize and permit Plaintiff and class members to take all rest periods;

24. That the Court make an award to the Plaintiff and class members of one (1) hour of pay at each employee's regular rate of pay for each workday that a rest period was not authorized and permitted;

25. For all actual, consequential, and incidental losses and damages, according to proof;

26. For premiums pursuant to California Labor Code section 226.7(c);

27. For pre-judgment interest on any unpaid rest period premiums from the date such amounts were due, or as otherwise provided by law;

28. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

29. For such other and further relief as the Court may deem equitable and appropriate.

As to the Fifth Cause of Action

30. That the Court declare, adjudge and decree that Defendants violated the recordkeeping provisions of California Labor Code section 226(a) and applicable IWC Wage Orders as to Plaintiff and Subclass members, and willfully failed to provide accurate itemized wage statements thereto;

1 31. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 32. For injunctive relief pursuant to California Labor Code section 226(h);

4 33. For statutory penalties pursuant to California Labor Code section 226(e);

5 34. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

7 35. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Sixth Cause of Action**

10 36. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201 and 202 by willfully failing to pay overtime wages, minimum wages,
12 and/or meal and rest period premiums owed at the time of termination of the employment of
13 Plaintiff and other terminated class members;

14 37. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 38. For waiting time penalties according to proof pursuant to California Labor
17 Code section 203 for all employees who have left Defendants' employ;

18 39. For pre-judgment interest on any unpaid wages from the date such amounts
19 were due, or as otherwise provided by law;

20 40. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 41. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Seventh Cause of Action**

25 42. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to timely pay Plaintiff and class members
27 overtime wages, minimum wages, and/or meal and rest period premiums during their
28 employment;

43. For all actual, consequential and incidental losses and damages, according to proof;

44. For statutory penalties according to proof pursuant to California Labor Code section 210;

45. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

46. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

47. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

48. That the Court declare, adjudge and decree that Defendants violated California Labor Code sections 551 and 552 by failing to provide a day's rest in seven; and that Defendants committed said violations of the Labor Code against Plaintiff and class members;

49. For civil penalties for conduct occurring any time between one year prior to the filing of this complaint and judgment, pursuant to California Labor Code section 558;

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

51. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

52. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiff and class members;

53. For unpaid business-related expenses and such general and special damages as may be appropriate;

54. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

55. For all actual, consequential, and incidental losses and damages, according to

1 proof;

2 56. For attorneys' fees and costs pursuant to California Labor Code section
3 2802(c), or as otherwise provided by law; and

4 57. For such other and further relief as the Court may deem equitable and
5 appropriate.

6 **As to the Tenth Cause of Action**

7 58. That the Court declare, adjudge and decree that Defendants violated the
8 following California Labor Code provisions as to Plaintiff and/or other aggrieved employees:
9 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197, 1197.1, and
10 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512, 516, and
11 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize and
12 permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
13 statements and maintain accurate payroll records); 201, 202, and 203 (by failing timely to pay
14 all earned wages upon termination); 204 (by failing timely to pay all earned wages during
15 employment); 221 and 224 (by collecting and/or receiving wages already paid); 223 (by
16 secretly paying wages lower than required by statute); 551 and 552 (by failing to provide one
17 day's rest in seven); 2802 (by failing to reimburse business expenses); 2810.5 (by failing to
18 provide written notice of information material to employment); and 6401 and 6403 (by failing
19 to provide safety devices and safeguards);

20 59. For civil penalties pursuant to California Labor Code sections 210, 225.5, 226.3,
21 256, 558, 1174.5, 1197.1, and/or 2699(a), (f) and (g), for violations of California Labor Code
22 sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d),
23 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

24 60. For attorneys' fees and costs pursuant to California Labor Code section
25 2699(g)(1), and any and all other relevant statutes, for Defendant's violations of California
26 Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551,
27 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403;

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

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

3 **As to the Eleventh Cause of Action**

4 63. That the Court declare, adjudge and decree that Defendants' conduct of failing
5 to provide Plaintiff and class members all overtime wages due to them, failing to provide
6 Plaintiff and class members all minimum wages due to them, failing to provide Plaintiff and
7 class members all meal periods, failing to authorize and permit Plaintiff and class members to
8 take all rest periods, failing to provide Plaintiff and class members accurate and complete
9 wage statements, failing to maintain accurate payroll records for Plaintiff and class members,
10 failing timely to pay Plaintiff and class members all earned wages during employment,
11 collecting or receiving wages already paid to Plaintiff and class members, secretly paying a
12 lower wage, failing to provide one day's rest in seven, and failing to reimburse Plaintiff and
13 class members for business-related expenses, constitutes an unlawful business practice in
14 violation of California Business and Professions Code sections 17200, *et seq.*;

15 64. For restitution of unpaid wages to Plaintiff and all class members and
16 prejudgment interest from the day such amounts were due and payable;

17 65. For the appointment of a receiver to receive, manage and distribute any and all
18 funds disgorged from Defendants and determined to have been wrongfully acquired by
19 Defendants as a result of violations of California Business & Professions Code sections 17200
20 *et seq.*;

21 66. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
22 California Code of Civil Procedure section 1021.5; and

23 67. For such other and further relief as the Court may deem equitable and
24 appropriate.

25 **As to the Twelfth Cause of Action**

26 68. That the Court declare, adjudge and decree that Defendants' conduct of denying
27 Plaintiff and class members the statutory benefits guaranteed under section 226.7 constitutes
28 an unfair business practice in violation of California Business and Professions Code sections

1 17200, *et seq.*;

2 69. For restitution of the statutory benefits under section 226.7 unfairly withheld
3 from Plaintiff and class members and prejudgment interest from the day such amounts were
4 due and payable;

5 70. For the appointment of a receiver to receive, manage and distribute any and all
6 funds disgorged from Defendants and determined to have been wrongfully acquired by
7 Defendants as a result of violations of California Business & Professions Code sections 17200
8 *et seq.*;

9 71. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
10 California Code of Civil Procedure section 1021.5;

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

12 73. For such other and further relief as the Court may deem equitable and
13 appropriate.
14

15 Dated: January 15, 2021

Respectfully submitted,

Capstone Law APC

17
18 By: 

19 Mark Ozzello
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EXHIBIT 1



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November 10, 2020

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/295>)

Subject: *Ezequiel Herrera v. Gibson Overseas, Inc.*

Dear PAGA Administrator:

This office represents Ezequiel Herrera in connection with his claims under the California Labor Code. Mr. Herrera was an employee of GIBSON OVERSEAS, INC. ("GIBSON").

The employer may be contacted directly at the address below:

GIBSON OVERSEAS, INC.
2410 YATES AVE.
COMMERCE, CA 90040

Mr. Herrera intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Herrera seeks relief on behalf of himself, the State of California, and other persons who are or were employed by GIBSON as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

GIBSON employed Mr. Herrera as an hourly paid, non-exempt employee from approximately June 2006 to May 2020. Mr. Herrera worked for GIBSON as a Laborer and Helper at its location in Commerce, California. During his employment, Mr. Herrera typically worked eight (8) hours or more per day, and five (5) days or more per week. At the time Mr. Herrera's employment with GIBSON ended, he earned approximately \$13.87 per hour. His job duties included, without limitation, painting tabletop kitchenware products, sweeping and mopping the painting area, and periodically installing and dismantling onsite trade show displays.

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

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

GIBSON OVERSEAS, INC. is a California corporation, and a leading producer of dinnerware, flatware, cookware, glassware, coffee and tea accessories, kitchen tools and gadgets, and other tabletop and housewares products. GIBSON operates at least two (2) locations in California. Upon information and belief, GIBSON maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Commerce, California, for all non-exempt, hourly paid employees working for GIBSON in California, including Mr. Herrera and other aggrieved employees. At all relevant times, GIBSON issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Herrera and other aggrieved employees, regardless of its location or position.

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

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

GIBSON willfully failed to pay all overtime wages owed to Mr. Herrera and other aggrieved employees. During the relevant time period, Mr. Herrera and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Mr. Herrera’s experience and counsel’s review of those records currently available relating to Mr. Herrera’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Herrera reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, GIBSON had, and continues to have, a company-wide policy and/or practice of understaffing its locations, while assigning heavy workloads and deadlines, resulting in a failure to provide Mr. Herrera and other aggrieved employees with adequate meal period coverage. As a result of this lack of meal period coverage, Mr. Herrera and other aggrieved employees members were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. For example, GIBSON would instruct Mr. Herrera to work off-the-clock through part of his meal periods twice per month to unload and begin painting kitchenware, in order to meet GIBSON's constant trade show and customer order deadlines. As a further example, Mr. Herrera had to forego his meal periods entirely when assigned to install and dismantle GIBSON's trade show displays. Moreover, GIBSON had a practice of failing schedule meal periods, which further caused Mr. Herrera and other aggrieved employees to not be relieved of their duties for compliant meal periods.

Additionally, on information and belief, because GIBSON frowned upon employees accruing meal period penalties, GIBSON's management would adjust Mr. Herrera's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had actually received a compliant meal period, in order to strictly limit meal penalties that GIBSON would otherwise owe. Consequently, Mr. Herrera and other aggrieved employees performed work during meal periods for which they were not paid.

Second, GIBSON had, and continues to have, a policy and/or practice of designating areas at its locations through which employees must first pass through and obtain authorization from GIBSON's management, in order to utilize the timekeeping system and clock in for their shifts. Before clocking in for their shifts, Mr. Herrera and other aggrieved employees were required to wait in line and receive supervisor authorization to clock in using the company's timekeeping system. Mr. Herrera and other aggrieved employees waited in line off-the-clock, for five (5) minutes per instance, to clock into their shifts at the start of the day, but GIBSON did not compensate them for the time they remained under GIBSON's control. Furthermore, when other aggrieved employees arrived late to work, after the morning meeting had started, they were required to wait until this meeting had concluded in order to clock into work, time for which they were not paid.

Moreover, GIBSON had, and continues to have, a loss prevention policy requiring Mr. Herrera and other aggrieved employees to undergo security checks at the beginning of their meal periods and at the end of their shifts before leaving the premises. Prior to taking their meal periods and at the end of their shifts, Mr. Herrera and other aggrieved employees were required to wait off-the-clock to undergo a security check before they could leave GIBSON's facilities. For example, each shift, Mr. Herrera was required to spend 5-10 minutes of the beginning of his meal period and after the end of his shift waiting for and undergoing security searches. Other aggrieved employees were also required to undergo security checks of their personal vehicles, after clocking out at the end of their scheduled shifts. As a result, Mr. Herrera and other aggrieved employees were subject to GIBSON's control until being released by a security guard, but were not compensated for this time.

Third, during the relevant period, GIBSON had, and continues to have, a company-wide policy and/or practice of requiring employees to complete work-related tasks while off-the-clock, such as responding to calls from GIBSON's management or traveling to off-site work locations. Mr. Herrera and other aggrieved employees were required to use their personal cellular phones to complete their

work-related tasks, such as discussing completed tasks with GIBSON's managers at all times, including before and after shifts. For example, Mr. Herrera would receive calls three (3) times per month and spend about five (5) minutes each time communicating with his supervisor off-the-clock via telephone. Furthermore, Mr. Herrera and other aggrieved employees were required to travel to different cities in connection with their work-related duties, but were not paid for the time they spent traveling to and from these cities. Twice per year, Mr. Herrera would be required to travel to Las Vegas, Nevada, and spent up to ten (10) hours traveling to and from trade shows, in order to install and dismantle GIBSON's trade show displays. GIBSON failed to track all of this time employees spent responding to phone calls and traveling in connection with their work-related duties, and Mr. Herrera and other aggrieved employees received no compensation for this time.

GIBSON knew or should have known that as a result of these company-wide practices and/or policies, Mr. Herrera and other aggrieved employees were working before and after their shifts and/or during their meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Herrera and other aggrieved employees worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Herrera and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Furthermore, GIBSON did not pay Mr. Herrera and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, GIBSON paid Mr. Herrera and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, GIBSON failed to incorporate all compensation, including, but not limited to, incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when Mr. Herrera and other aggrieved employees worked overtime and received these other forms of pay, GIBSON failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Herrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, due to GIBSON's company-wide policy and/or practice of understaffing, assignment of heavy workloads and deadlines, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Herrera and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock. Additionally, as stated, GIBSON systematically failed to pay Mr. Herrera and other aggrieved employees for actual hours worked during unpaid meal periods, because these hours were not always correctly recorded. In addition, as stated above, GIBSON required Mr. Herrera and other aggrieved

employees to wait in line and be authorized by a supervisor prior to clocking in, wait after morning meetings had concluded before clocking in, undergo security checks or vehicle checks after clocking out, and/or complete work-related tasks off-the-clock, but failed to compensate them for this time.

Thus, GIBSON did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, GIBSON did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, GIBSON regularly failed to pay at least minimum wages to Mr. Herrera and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Mr. Herrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

As stated, GIBSON had, and continues to have, a company-wide policy and/or practice of understaffing, assigning heavy workloads and deadlines, and failing to schedule meal periods, which prevented Mr. Herrera and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Mr. Herrera and other aggrieved employees had to work through part or all of their meal periods, have their meal periods interrupted, and wait extended periods of time before taking meal periods. For example, Mr. Herrera had to forego his meal periods entirely, when assigned to install and dismantle GIBSON's trade show displays. As a further example, GIBSON instructed Mr. Herrera to work through part of his meal periods two (2) times per month to unload and paint kitchenware in order to meet GIBSON's constant trade show and customer order deadlines.

Moreover, as stated, on information and belief, because GIBSON frowned upon employees accruing meal period penalties, GIBSON's management would adjust Mr. Herrera's and other aggrieved employees' time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period, in order to strictly limit meal penalties that GIBSON would otherwise owe.

Second, as stated, GIBSON required its employees to be subject to loss prevention policies, which resulted in Mr. Herrera and other aggrieved employees receiving shortened meal periods, because they were required to undergo mandatory security checks before leaving the premises. For example, two (2) times per week, when Mr. Herrera intended to take his meal period off-premises, he was required to spend 5-10 minutes waiting off-the-clock during his meal period for and undergoing a security check before GIBSON permitted him to leave.

In addition, during the relevant time period, GIBSON did not provide Mr. Herrera and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. For example, four (4) times per week, Mr. Herrera would work shifts in excess of ten (10) hours per day, but was not provided second meal periods during these shifts. Mr. Herrera and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

As a result of GIBSON's practices and/or policies, Mr. Herrera and other aggrieved employees were forced to work in excess of five (5) hours before taking a meal period and, at times, had their meal periods interrupted, and/or had to forgo their meal periods altogether. GIBSON knew or should have known that as a result of its policies, Mr. Herrera and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. GIBSON further knew or should have known that it did not pay Mr. Herrera and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, GIBSON engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Herrera and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that GIBSON did pay Mr. Herrera and other aggrieved employees premium pay for missed, late, and interrupted meal periods, GIBSON did not pay Mr. Herrera and other aggrieved employees at the correct rate of pay for premium wages because GIBSON systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, GIBSON failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Herrera and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)

hours or major fraction thereof” unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties — including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, GIBSON regularly failed to authorize and permit Mr. Herrera and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, GIBSON’s policies and/or practices of understaffing and assigning heavy workloads and deadlines prevented Mr. Herrera and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. GIBSON also failed to adhere to a schedule of rest periods, which, coupled with GIBSON’s failure to provide adequate rest period coverage, further led to Mr. Herrera and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, during the relevant time period, GIBSON maintained a company-wide practice and/or policy effectively requiring that Mr. Herrera and other aggrieved employees remain on GIBSON’s premises during their rest periods. As stated, Mr. Herrera and other aggrieved employees were subject to security searches, and thus were required to wait for a security guard to perform a security check whenever they wished to leave the premises, resulting in rest periods that would be cut short by 5-10 minutes. Because Mr. Herrera and other aggrieved employees were implicitly restricted from leaving GIBSON’s premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes. Thus, GIBSON effectively maintained control over Mr. Herrera and other aggrieved employees during rest periods, and, as a result of this rest period policy, GIBSON did not relinquish control over Mr. Herrera and other aggrieved employees during rest periods.

As a result, Mr. Herrera and other aggrieved employees would work shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without being permitted and authorized to take all ten (10) minute rest periods to which they were entitled. For example, throughout his employment, Mr. Herrera missed rest periods two (2) times per week in order to complete all of the work-related duties GIBSON assigned to him. Additionally, Mr. Herrera did not receive a third rest period when working shifts in excess of 10 hours.

GIBSON also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Alternatively, to the extent that GIBSON did pay Mr. Herrera and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, GIBSON did not pay Mr. Herrera and other aggrieved employees at the correct rate of pay for premium wages because GIBSON failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, GIBSON failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Herrera and other aggrieved employees are entitled to civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. GIBSON has not provided Mr. Herrera and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, GIBSON has knowingly and intentionally provided Mr. Herrera and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, GIBSON issued uniform wage statements to Mr. Herrera and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, GIBSON violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

First, because GIBSON did not record the time Mr. Herrera and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), GIBSON did not list the correct amount of gross wages and net wages earned by Mr. Herrera and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, GIBSON failed to accurately list the total number of hours worked by Mr. Herrera and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Additionally, because GIBSON did not calculate Mr. Herrera's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, GIBSON did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, GIBSON also failed to list the correct amount of net wages in violation of section 226(a)(5). GIBSON also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

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

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), GIBSON willfully failed to maintain accurate payroll records for Mr. Herrera and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, GIBSON failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Herrera and other aggrieved employees, in violation of section 1198. As stated, GIBSON engaged in a company-wide practice and/or policy of falsifying Mr. Herrera’s and other aggrieved employees’ time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Herrera and other aggrieved employees. Furthermore, in light of GIBSON’s failure to provide Mr. Herrera and other aggrieved employees with second 30-minute meal periods to which they were entitled, GIBSON kept no records of meal start and end times for second meal periods.

Because GIBSON failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Herrera and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Herrera and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Herrera and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

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

Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, GIBSON failed to pay Mr. Herrera and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages, within any time period specified by California Labor Code section 204.

Mr. Herrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information and belief, GIBSON has a company-wide practice or policy of paying departing employees their final wages on the next regular pay cycle, instead of adhering to the time requirements set forth in Labor Code sections 201 and 202. For example, Mr. Herrera was terminated on or around June 18, 2020, but did not receive his final wages from GIBSON until on or about June 24, 2020. Thus, GIBSON failed to pay Mr. Herrera his final wages immediately, in violation of Labor Code section 201.

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

Mr. Herrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 221 and 224 – Unlawful Deductions

California Labor Code section 221 provides that it shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee. California Labor Code section 224 also provides in pertinent part that it is lawful to withhold a portion of the employee's wages if "a deduction is expressly authorized in writing by the employee." During the relevant time period, GIBSON unlawfully deducted a portion of wages previously paid to Mr. Herrera and other aggrieved employees in violation of California Labor Code section 221.

GIBSON systematically, and on a company-wide basis, took money out of Mr. Herrera's and other aggrieved employees' pay. On information and belief, such deductions were not expressly authorized in writing by Mr. Herrera and other aggrieved employees.

GIBSON's policy of deducting money from Mr. Herrera's and other aggrieved employees' paychecks without their written authorization constitutes an unlawful deduction of wages, in violation of Labor Code sections 221 and 224. Mr. Herrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 223 – Secret Payment of Lower Wages

California Labor Code section 223 makes it unlawful for an employer to secretly pay wages lower than required by statute while purporting to pay legal wages.

During the relevant time period, as stated above, GIBSON willfully and systematically deducted money from Mr. Herrera's and other aggrieved employees' wages without their express written authorization, on information and belief, which resulted in a discount in their wages. GIBSON's deduction from its employees' wages resulted in the payment of less than statutorily required wages to Mr. Herrera and other aggrieved employees. In doing so, GIBSON acted with the intent to deprive Mr. Herrera and other aggrieved employees of statutory wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, to which they were entitled to under California law. Thus, GIBSON paid Mr. Herrera and other aggrieved employees lower wages than those they were entitled to while purporting that Mr. Herrera and other aggrieved employees were properly paid.

Mr. Herrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 225.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 551 and 552 – Failure to Provide One Day's Rest in Seven

California Labor Code section 551 provides that every person employed in any occupation of labor is entitled to one day's rest in seven. California Labor Code section 552 prohibits employers from requiring employees to work more than six consecutive days without a day of rest. California Labor Code section 556 exempts an employer from the day-of-rest requirement when the total hours worked by an employee do not exceed 30 hours in any week or six hours in any one day thereof.

During the relevant time period, on information and belief, GIBSON scheduled Mr. Herrera and other aggrieved employees to work six (6) or more hours per day and more than seven (7) consecutive days in a workweek. Because Mr. Herrera and other aggrieved employees worked over 30 hours per week and over six (6) hours per day in a workweek, they were not exempt from the day-of-rest requirement. To the extent that Mr. Herrera and other aggrieved employees may have signed purported waivers of their right to a day's rest in seven, such waivers are invalid.

Thus, GIBSON caused Mr. Herrera and other aggrieved employees to work more than six days in seven, in violation of Labor Code sections 551 and 552. Mr. Herrera and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

During the relevant time period, GIBSON had a company-wide policy of requiring Mr. Herrera and other aggrieved employees to utilize their own personal cellular phones and cellular data to discuss work-related matters, but GIBSON failed to reimburse them for the costs of their work-related cellular phone expenses. As stated, Mr. Herrera was required to use his personal cellular phone to complete work-related tasks, such as discussing details about his previous shifts with his manager. Although GIBSON required Mr. Herrera and other aggrieved employees to utilize their personal cellular phones to address work-related responsibilities, GIBSON failed to reimburse them for their cellular phone expenses.

In addition, GIBSON, on a company-wide basis, mandated that other aggrieved employees purchase safety devices/safeguards, including special safety shoes such as steel-toed boots and/or safety vests, which they were required to wear while at work. GIBSON sometimes required other aggrieved employees to purchase these items from a specific vendor, and other aggrieved employees purchased steel-toed boots and safety vests, including replacement boots and vests, to wear inside GIBSON's facilities, but were not reimbursed fully for these costs.

GIBSON could have provided Mr. Herrera and/or other aggrieved employees with the actual tools for use on the job, such as company phones or safety devices/safeguards, or GIBSON could have fully reimbursed employees for the costs of their cellular phone usage and safety devices/safeguards. Instead, GIBSON passed these operating costs off onto Mr. Herrera and/or other aggrieved employees. At all relevant times, Mr. Herrera did not earn at least two (2) times the minimum wage.

Thus, GIBSON had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Herrera and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

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

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the

employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

GIBSON failed to provide other aggrieved employees written notice that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). GIBSON's failure to provide other aggrieved employees with written notice of basic information regarding their employment with GIBSON is in violation of Labor Code section 2810.5.

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

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

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

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

GIBSON's failure to provide other aggrieved employees with safety devices and safeguards, including basic personal protective equipment, for the workplace violates Labor Code sections 6401 and 6403. Other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." GIBSON, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Herrera's and other aggrieved employees' rights by violating various sections of the

California Labor Code.

Accordingly, Mr. Herrera seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Herrera, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against GIBSON for violations of California Labor Code sections 201, 202, 203, 204, 221, 223, 224, 226(a), 226.7, 510, 512(a), 516, 551, 552, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 2810.5, 6401, and 6403.

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

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

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

Best Regards,

A handwritten signature in black ink, appearing to read "Mao Shiokura", with a stylized flourish at the end.

Mao Shiokura

Copy: GIBSON OVERSEAS, INC. (via U.S. Certified Mail)

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