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ORIGINAL FILED
Superior Court of California
County of Los Angeles

JAN 14 2021

Sherri R. Carter, Executive Officer/Clerk
By: Robn Sanchez, Deputy

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JAN 14 2021

S. DREW

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

GAUDENCIO CALVARIO, as an individual
and on behalf of all others similarly situated,

Plaintiff,

vs.

GOLDEN FOOD, INC., a California
Corporation; and DOES 1 through 100,

Defendants.

Case No.: 20STCV42687

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT:**

- (1) **FAILURE TO PAY ALL
OVERTIME WAGES (LABOR
CODE §§ 204, 510, 558, 1194, AND
1198);**
- (2) **MINIMUM WAGE VIOLATIONS
(LABOR CODE §§ 1182.12, 1194,
1194.2, 1197);**
- (3) **MEAL PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 512, 558)**
- (4) **REST PERIOD VIOLATIONS
(LABOR CODE §§ 226.7, 516, 558);**
- (5) **FAILURE TO REIMBURSE
NECESSARY BUSINESS
EXPENSES (LABOR CODE §§
2802, 2804);**
- (6) **WAGE STATEMENT
VIOLATIONS (LABOR CODE §
226 *et seq.*);**
- (7) **UNFAIR COMPETITION (BUS &
PROF CODE § 17200 *et seq.*); AND**

**(8) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE
§§ 2698, *et seq.*).**

**DEMAND FOR JURY TRIAL
UNLIMITED CIVIL CASE**

Plaintiff Gaudencio Calvario (“Plaintiff”) on behalf of himself and all others similarly situated, hereby brings this First Amended Class and Representative Action Complaint against Defendants Golden Food, Inc., a California Corporation, and DOES 1 to 100 (collectively “Defendants”), inclusive, and on information and belief alleges as follows:

JURISDICTION

1. Plaintiff, on behalf of himself and all others similarly situated, hereby brings this action for recovery of unpaid wages and penalties under California Labor Code §§ 204, 226 *et seq.*, 226.2, 226.7, 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804 and 2698 *et seq.*, and Business and Professions Code § 17200 *et. seq.* (“Unfair Competition Law”), and Industrial Welfare Commission Wage Order 8-2001 (“Wage Order 8”), in addition to seeking declaratory relief and restitution. This action is brought pursuant to California Code of Civil Procedure § 382. This Court has jurisdiction over Defendants’ violations of the California Labor Code because the amount in controversy exceeds this Court’s jurisdictional minimum.

VENUE

2. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of herein occurred in Los Angeles. Defendants own, maintain offices, transact business, have an agent or agents within the County of Los Angeles, and/or otherwise are found within the County of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of process.

PARTIES

3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein, Plaintiff was and currently is, a California resident and resides in the County of Los Angeles. During the four years immediately preceding the filing of this action and within the statute of

1 limitations periods applicable to each cause of action pled herein, Plaintiff was employed by
2 Defendants as a non-exempt employee in Los Angeles. Plaintiff was, and is, a victim of
3 Defendants' policies and/or practices complained of herein, lost money and/or property, and has
4 been deprived of the rights guaranteed by California Labor Code §§ 204, 226 *et seq.*, 226.2, 226.7,
5 510, 512, 516, 558, 1182.12, 1194, 1194.2, 1197, 1198, 2802, 2804 2698 *et seq.*, California's
6 Unfair Competition Law, and Wage Order 8, which sets employment standards for industries
7 handling products after harvest, including poultry processing.

8 4. Plaintiff is informed and believes, and based thereon alleges, that during the four
9 years preceding the filing of this action and continuing to the present, Defendants did (and
10 continue to do) business within the County of Los Angeles and the State of California by
11 employing non-exempt employees in various capacities.

12 5. Plaintiff does not know the true names or capacities, whether individual, partner,
13 or corporate, of the defendants sued herein as DOES 1 to 100, inclusive, and for that reason, said
14 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
15 amend this Complaint when such true names and capacities are discovered. Plaintiff is informed,
16 and believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
17 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
18 and proximately caused Plaintiff and the Classes (as defined herein) to be subject to the unlawful
19 employment practices, wrongs, injuries and damages complained of herein.

20 6. Plaintiff is informed and believes, and based thereon alleges, that at all times
21 mentioned herein, Defendants were and are the employers of Plaintiff and all members of the
22 Classes.

23 7. At all times herein mentioned, each of said Defendants participated in the doing
24 of the acts hereinafter alleged to have been done by the named Defendants, and furthermore, the
25 Defendants, and each of them, were the agents, servants, and employees of each and every one of
26 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
27 were acting within the course and scope of said agency and employment. Defendants, and each
28 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or

omissions complained of herein.

8. At all times mentioned herein, Defendants, and each of them, were members of and engaged in a joint venture, partnership, and common enterprise, and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and all members of the Classes.

GENERAL FACTUAL ALLEGATIONS

9. Defendants are in the business of processing poultry for commercial sale. Plaintiff has worked for Defendants as a non-exempt employee since approximately September 2015. Plaintiff's primary duties include butchering and preparing chicken. Unless otherwise specified, all allegations contained herein occurred during Plaintiff's employment with Defendants.

10. Plaintiff is paid on a piece-rate basis, whereby he is paid a predetermined amount per box of chickens he prepares. Although Plaintiff and other non-exempt employees clock in and out at a punch clock each workday, Defendants have failed to accurately record and compensate Plaintiff and other non-exempt employees for so-called "non-productive" time (i.e. hours employees were working but were not actually performing piece-rate work). For example, Plaintiff and other non-exempt employees regularly experience delays which require them to wait approximately 30 minutes before beginning work because the product has not arrived. Additionally, Plaintiff and other non-exempt employees are required to don and doff protective gear (such as aprons, nonslip boots, gloves, and face coverings) as well as clean and sanitize their knives and work stations. Under Defendants' piece-rate compensation system, Plaintiff and other non-exempt employees are not compensated for the time spent performing such tasks. As a result of Defendants' failure to compensate for nonproductive time, Defendants have not paid Plaintiff and other non-exempt employees for all hours worked at the minimum wage. *See Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 48-49 (holding that a piece-rate compensation structure that does not separately compensate employees for non-productive time violates California minimum wage laws).

1 11. Plaintiff's workday begins as early as 5:00 a.m. and ends around 2:00 p.m. Plaintiff
2 regularly works in excess of 8 hours per day and/or 40 hours per week. However, Defendants fail
3 to pay Plaintiff and other non-exempt employees overtime compensation, and instead pay
4 employees solely based on their piece-rate earnings, despite overtime hours being recorded on
5 their timecards. Defendants also regularly require Plaintiff and other non-exempt employees to
6 work prior to clocking in, and after clocking out for the day. Although Plaintiff regularly works
7 approximately 45 hours per workweek, not all of these hours are recorded because Defendants
8 maintain a policy/practice of allowing Plaintiff and other non-exempt employees to record up to
9 8.0 hours worked per day. When Plaintiff's actual work time exceeds 8.0 hours, he is required to
10 clock out and continue working until it is completed. Similarly, Plaintiff is not allowed to clock
11 in for work until he is prepared to begin preparing chickens, so the time spent putting on protective
12 gear, cleaning his knives, and waiting for boxes, is not recorded on daily timecards. As a result of
13 Defendants' timekeeping policies/practices, Plaintiff and other non-exempt employees were
14 deprived of earned overtime compensation.

15 12. Defendants failed to provide Plaintiff and other non-exempt employees with all
16 legally compliant meal periods. Specifically, Defendants regularly failed to provide Plaintiff and
17 other non-exempt employees with a full 30-minute uninterrupted, meal period when working a
18 shift in excess of 5.0 hours. Specifically, Plaintiff and other non-exempt employees were regularly
19 called back to work during their meal periods in order to complete more boxes. Additionally,
20 because Plaintiff and other non-exempt employees were paid solely based on the number of boxes
21 they finished each week, Defendants encouraged Plaintiff and other non-exempt employees to
22 spend less than 30 minutes on their meal period. When Plaintiff worked shifts in excess of 10.0
23 hours, Plaintiff was not provided a second meal period due to Defendants' meal period
24 policies/practices which do not provide a second meal period for shifts in excess of 10.0 hours.
25 As a result of this practice, Defendants failed to provide Plaintiff and other non-exempt employees
26 with all lawful meal periods to which they were entitled. Despite Defendants' failure to provide
27 Plaintiff and other non-exempt employees with all lawful meal periods, Defendants failed to
28

1 provide Plaintiff and similarly situated employees with an additional hour of premium pay for
2 each workday in which a meal period violation occurred, as required by Labor Code § 226.7.

3 13. Defendants do not separately compensate Plaintiff or other non-exempt employees
4 paid on a piece-rate basis for rest periods, as required by *Bluford v. Safeway Stores, Inc.* (2013)
5 216 Cal.App.4th 864, 872 (“under the rule of *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th
6 314, 323, rest periods must be separately compensated in a piece-rate system.”); *see also* Labor
7 Code § 226.2 (requiring employees who are compensated on a piece-rate basis to be separately
8 compensated for rest periods at the higher of the minimum wage or the average hourly rate of pay
9 during the workweek). Defendants also failed to authorize and permit Plaintiff and other non-
10 exempt employees to take all duty-free 10-minute rest periods for every 4 hours worked, or major
11 fraction thereof. Specifically, Defendants only authorized and permitted a single rest period per
12 shift, at approximately 8:00 a.m., with no additional rest periods, regardless of shift length.
13 Defendants required Plaintiff and other non-exempt employees to clock in and out for this rest
14 break on their timecard. Defendants therefore failed to authorize and permit Plaintiff and other
15 non-exempt employees to take a second 10-minute rest period when they worked shifts in excess
16 of 6.0 hours. As of result of Defendants’ unlawful rest period policies/practices, Defendants are
17 liable for rest period penalties for their failure to authorize and permit Plaintiff and other non-
18 exempt employees paid on a piece-rate basis to take paid rest periods.

19 14. Defendants also require Plaintiff and other non-exempt employees to purchase and
20 repair knives used to complete work duties, without reimbursement. *See* Labor Code § 2802(a)
21 (“An employer shall indemnify his or her employee for all necessary expenditures or losses
22 incurred by the employee in direct consequence of the discharge of his or her duties...”); *see also*
23 *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562 (explaining the purpose of
24 Labor Code § 2802 is to prevent employers from passing the operating costs of the business onto
25 the employees).

26 15. As a result of Defendants’ failure to pay all minimum wages, overtime wages, and
27 meal and rest period premium wages, Defendants maintained inaccurate payroll records and
28 issued inaccurate wage statements to Plaintiff and other non-exempt employees. Defendants’

wage statements are also facially deficient because they fail to include the number of piece-rate units earned as well as any applicable piece rate, in violation of Labor Code § 226(a).

16. Pursuant to the California Emergency Rules Related to COVID-19, the statute of limitations for the causes of action alleged in this lawsuit were tolled for an additional 178 days. *See* Emergency Rule 9(a) (“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”)

CLASS ACTION ALLEGATIONS

17. **Class Definitions:** Plaintiff brings this action on behalf of himself and the following Classes pursuant to § 382 of the Code of Civil Procedure:

- a. The Overtime Class consists of all Defendants’ current and former non-exempt employees in California who, at any time between May 12, 2016 through the present, worked more than 8 hours per day and/or 40 hours per week and were subject to Defendants’ timekeeping policies/practices.
- b. The Minimum Wage Class consists of all of Defendants’ current and former non-exempt employees in California who, at any time between May 12, 2016 through the present, performed work that was compensated on a piece-rate basis.
- c. The Meal Period Class consists of all of Defendants’ current and former non-exempt employees in California who, at any time between May 12, 2016 through the present, (1) worked at least one shift in excess of 5.0 hours without a recorded meal period of at least 30-minutes commencing before the end of the fifth hour of work; and/or (2) worked at least one shift in excess of 10.0 hours without a recorded second meal period of at least 30-minutes commencing before the end of the tenth hour of work.
- d. The Rest Period Class consists of all of Defendants’ current and former non-exempt employees in California who, at any time between May 12, 2016 through the present, (1) worked at least one shift in excess of 3.5 hours while performing

work that was compensated on a piece-rate basis; and/or (2) worked at least one shift in excess of 6.0 hours.

e. The Reimbursement Class consists of all of Defendants' current and former non-exempt employees in California who, at any time between May 12, 2016 through the present, were required to purchase and/or repair knives for work purposes without reimbursement.

f. The Wage Statement Class consists of all members of the Minimum Wage Class, Overtime Class, Meal Period Class, and/or Rest Period Class who, at any time between May 12, 2019 through the present, received a wage statement from Defendants.

18. **Numerosity/Ascertainability:** The members of the Classes are so numerous that joinder of all members would be unfeasible and not practicable. The membership of the Classes and Subclasses are unknown to Plaintiff at this time; however, it is estimated that the members of the Classes number greater than fifty (50) individuals as to each Class. The identity of such membership is readily ascertainable via inspection of Defendants' employment records.

19. **Common Questions of Law and Fact Predominate/Well Defined Community of Interest:** There are common questions of law and fact as to Plaintiff and all other similarly situated employees, which predominate over questions affecting only individual members including, without limitation to:

i. Whether Defendants violated the applicable Labor Code provisions, including but not limited to, §§ 510 and 1194 by requiring members of the Overtime Class to perform work and not paying for said work in accordance with the overtime laws of the State of California.

ii. Whether Defendants paid all minimum wages owed for all hours worked to members of the Minimum Wage Class pursuant to Labor Code §§ 1182.12, 1194, 1194.2, and 1197;

- iii. Whether Defendants' timekeeping policies/practices resulted in the failure to properly compensate members of the Overtime Class and/or Minimum Wage class;
- iv. Whether Defendants provided all legal compliant meal periods to members of the Meal Period Class pursuant to Labor Code §§ 226.7 and 512;
- v. Whether Defendants authorized and permitted all lawful rest periods to members of the Rest Period Class pursuant to Labor Code §§ 226.7 and 516;
- vi. Whether Defendants correctly paid meal period premium payments for non-compliant meal periods pursuant to Labor Code § 226.7;
- vii. Whether Defendants correctly compensated employees for rest periods and other non-productive time pursuant to Labor Code § 226.2;
- viii. Whether Defendants failed to reimburse members of the Reimbursement Class for all necessary business expenses incurred pursuant to Labor Code sections 2802 and 2804; and
- ix. Whether Defendants furnished legally complaint wage statements to members of the Wage Statement Class pursuant to Labor Code § 226.

20. **Predominance of Common Questions:** Common questions of law and fact predominate over questions that affect only individual members of the Classes. The common questions of law set forth above are numerous and substantial and stem from Defendants' policies and/or practices applicable to each individual class member, such as Defendants' uniform piece-rate compensation structure, timekeeping policies/practices, and meal and rest period policies. As such, the common questions predominate over individual questions concerning each individual class member's showing as to his or her eligibility for recovery or as to the amount of his or her damages.

21. **Typicality:** Plaintiff's claims are typical of the claims of the Classes because Plaintiff was employed by Defendants as a non-exempt employee in California during the statute of limitations periods applicable to each cause of action pled herein. As alleged herein, Plaintiff, like the members of the Classes, was paid on a piece-rate basis, not compensated for overtime

hours, nonproductive time, rest periods, was not provided legally-compliant meal and rest periods, and was furnished with inaccurate and incomplete wage statements.

22. **Adequacy of Representation:** Plaintiff is fully prepared to take all necessary steps to represent fairly and adequately the interests of the members of the Classes. Moreover, Plaintiff's attorneys are ready, willing, and able to represent the members of the Classes and Plaintiff fully and adequately. Plaintiff's attorneys have prosecuted and defended numerous wage and hour class actions in state and federal courts in the past, and are committed to vigorously prosecuting this action on behalf of the members of the Classes.

23. **Superiority:** The California Labor Code is broadly remedial in nature and serves an important public interest in establishing minimum working conditions and standards in California. These laws and labor standards protect the average working employee from exploitation by employers who have the responsibility to follow the laws, and who may seek to take advantage of superior economic and bargaining power in setting onerous terms and conditions of employment. The nature of this action and the format of laws available to Plaintiff and members of the Classes make the class action format a particularly efficient and appropriate procedure to redress the violations alleged herein. If each employee was required to file an individual lawsuit, Defendants would necessarily gain an unconscionable advantage since they would be able to exploit and overwhelm the limited resources of each individual plaintiff with their vastly superior financial and legal resources. Moreover, requiring each member of the Class(es) to pursue an individual remedy would also discourage the assertion of lawful claims by employees who would be disinclined to file an action against their former and/or current employer for real and justifiable fear of retaliation and permanent damages to their careers at subsequent employment. Further, the prosecution of separate actions by the individual class members, even if possible, would create a substantial risk of inconsistent or varying verdicts or adjudications with respect to the individual class members against Defendants herein; and which would establish potentially incompatible standards of conduct for Defendants; and/or legal determinations with respect to individual class members which would, as a practical matter, be dispositive of the interest of the other class members not parties to adjudications or which would

1 substantially impair or impede the ability of the class members to protect their interests. Further,
2 the claims of the individual members of the Classes are not sufficiently large to warrant vigorous
3 individual prosecution considering all of the concomitant costs and expenses attending thereto.
4 As such, the Classes (as defined herein) are maintainable under § 382 of the Code of Civil
5 Procedure.

6 **FIRST CAUSE OF ACTION**

7 **FAILURE TO PAY ALL OVERTIME WAGES**

8 **(AGAINST ALL DEFENDANTS)**

9 24. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

10 25. This cause of action is brought pursuant to Labor Code §§ 204, 510, 558, 1194,
11 and 1198, which provide that non-exempt employees are entitled to overtime wages for all
12 overtime hours worked and provide a private right of action for the failure to pay all overtime
13 compensation for overtime work performed.

14 26. At all times relevant herein, Defendants were required to properly pay Plaintiff
15 and members of the Overtime Class for all overtime hours worked pursuant to California Labor
16 Code § 1194 and Wage Order 8. Wage Order 8, § 3 requires an employer to pay an employee
17 “one and one-half (1 ½) times the employee’s regular rate of pay for all hours worked in excess
18 of eight (8) hours” per work day and/or in excess of 40 hours of work in the workweek.

19 27. At all times relevant herein, Defendants caused Plaintiff and other non-exempt
20 employees to work overtime hours but did not compensate Plaintiff or members of the Overtime
21 Class at one and one-half times their regular rate of pay for such hours.

22 28. The foregoing policies and practices are unlawful and create entitlement to
23 recovery by Plaintiff and the Overtime Class in a civil action for the unpaid amount of overtime
24 premiums owing, including interest thereon, statutory and civil penalties, attorney’s fees, and
25 costs of suit according to California Labor Code §§ 204, 510, 558, 1194, and 1198, Wage Order
26 8, and Code of Civil Procedure § 1021.5.

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SECOND CAUSE OF ACTION
MINIMUM WAGE VIOLATIONS
(AGAINST ALL DEFENDANTS)

29. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

30. Wage Order 8, § 4 and California Labor Code §§ 1197 and 1182.12 establish the right of employees to be paid minimum wages for all hours worked, in amounts set by state law. Labor Code §§ 1194(a) and 1194.2(a) provide that an employee who has not been paid the legal minimum wage as required by Labor Code § 1197 may recover the unpaid balance together with attorneys' fees and costs of suit, as well as liquidated damages in an amount equal to the unpaid wages and interest accrued thereon.

31. At all relevant times herein, Defendants failed to conform their pay practices to the requirements of the law by failing to pay Plaintiff and members of the Minimum Wage Class for all hours worked including, but not limited to, all hours they were subject to the control of Defendants and/or suffered or permitted to work under the California Labor Code and Wage Order 8.

32. California Labor Code § 1198 makes unlawful the employment of an employee under conditions that the IWC prohibits. California Labor Code §§ 1194(a) and 1194.2(a) provide that an employer who has failed to pay its employees the legal minimum wage is liable to pay those employees the unpaid balance of the unpaid wages as well as liquidated damages in an amount equal to the wages due and interest thereon.

33. As a direct and proximate result of Defendants' unlawful conduct as alleged herein, Plaintiff and the Minimum Wage Class have sustained economic damages including, but not limited to, unpaid wages and lost interest, in an amount to be established at trial, and are entitled to recover economic and statutory damages and penalties and other appropriate relief as a result of Defendants' violations of the California Labor Code and Wage Order 8.

34. The foregoing practices and policies are unlawful and create an entitlement to recovery by Plaintiff and the members of the Minimum Wage Class in a civil action for the unpaid amount of minimum wages owing, including interest thereon, liquidated damages, statutory and

1 civil penalties, attorney's fees, and costs of suit according to California Labor Code §§ 204, 558,
2 1194, 1197, and 1198, Wage Order 8, and Code of Civil Procedure § 1021.5.

3 **THIRD CAUSE OF ACTION**

4 **MEAL PERIOD VIOLATIONS**

5 **(AGAINST ALL DEFENDANTS)**

6 35. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

7 36. Plaintiff is informed and believes, and based thereon alleges, that Defendants
8 failed in their affirmative obligation to provide all of their non-exempt employees in California,
9 including Plaintiff and members of the Meal Period Class, with all legally compliant meal periods
10 in accordance with the mandates of the California Labor Code and Wage Order 8, § 11, for the
11 reasons set forth in the General Factual Allegations and Class Definitions sections of this
12 Complaint. Despite Defendants' violations, Defendants did not pay an additional hour of premium
13 pay to Plaintiff and members of the Meal Period Class at their respective regular rates of pay, in
14 accordance with California Labor Code §§ 226.7 and 512.

15 37. As a result, Defendants are responsible for paying premium compensation for meal
16 period violations, including interest thereon, statutory penalties, civil penalties, and costs of suit,
17 pursuant to Labor Code §§ 226.7, 512, and 558, Wage Order 8, and Code of Civil Procedure §
18 1021.5.

19 **FOURTH CAUSE OF ACTION**

20 **REST PERIOD VIOLATIONS**

21 **(AGAINST ALL DEFENDANTS)**

22 38. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

23 39. Wage Order 8, § 12 and Labor Code §§ 226.7, 516 and 558 establish the right of
24 employees to be provided with a rest period of at least ten (10) minutes for each four (4) hour
25 period worked, or major fraction thereof. Further, Labor Code § 226.2 requires employees who
26 are compensated on a piece-rate basis to be separately compensated for rest periods.

27 40. As alleged herein, and due to Defendants' unlawful rest period policies and/or
28 practices, Defendants did not authorize and permit members of the Rest Period Class to take the

1 paid rest periods to which they were legally entitled. Despite Defendants' violations, Defendants
2 have not paid an additional hour of pay to Plaintiff and members of the Rest Period Class at their
3 respective regular rates of pay for each violation in accordance with Labor Code § 226.7.

4 41. The foregoing policies and practices are unlawful and create an entitlement to
5 recovery by Plaintiff and members of the Rest Period Class in a civil action for the unpaid amount
6 of rest period premiums owing, including interest thereon, statutory penalties, civil penalties, and
7 costs of suit according to Labor Code §§ 226.7, 516, and 558, Wage Order 8, and Code of Civil
8 Procedure § 1021.5.

9 **FIFTH CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

11 **(AGAINST ALL DEFENDANTS)**

12 42. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

13 43. At all relevant times herein, Defendants were subject to Labor Code § 2802, which
14 states that "an employer shall indemnify his or her employees for all necessary expenditures or
15 losses incurred by the employee in direct consequence of the discharge of his or her duties, or of
16 his or obedience to the directions of the employer."

17 44. At all relevant times herein, Defendants were subject to Labor Code § 2804, which
18 states that "any contract or agreement, express or implied, made by any employee to waive the
19 benefits of this article or any part thereof, is null and void, and this article shall not deprive any
20 employee or his personal representative of any right or remedy to which he is entitled under the
21 laws of this State."

22 45. As alleged herein, due to Defendants' unlawful reimbursement practices,
23 Defendants failed to indemnify Plaintiff and the members of the Reimbursement Class for all
24 necessary business expenses incurred, including, among other things, the cost for purchase and
25 repair of knives.

26 46. As a proximate result of Defendants' policies and/or practices in violation of Labor
27 Code sections 2802 and 2804, Plaintiff and members of the Reimbursement Class are entitled to
28 damages, attorneys' fees and costs of suit, and interest thereon, in sums to be shown according to

1 proof at trial, pursuant to Labor Code § 2802.

2 **SIXTH CAUSE OF ACTION**

3 **WAGE STATEMENT PENALTIES**

4 **(AGAINST ALL DEFENDANTS)**

5 47. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

6 48. Plaintiff is informed and believes, and based thereon alleges, that Defendants
7 knowingly and intentionally, as a matter of uniform policy and practice, failed to furnish Plaintiff
8 and the Wage Statement Class with accurate and complete itemized wage statements that
9 included, among other requirements, all minimum and overtime wages owed, all meal and rest
10 period premium wages earned, as well as the number of piece-rate units earned and any applicable
11 piece rate, all in violation of Labor Code § 226.

12 49. Defendants' failure to furnish Plaintiff and members of the Wage Statement Class
13 with complete and accurate itemized wage statements resulted in actual injury, as said failures led
14 to, among other things, the non-payment of all minimum and overtime wages owed, all meal and
15 rest period premium wages, and deprived them of the information necessary to identify the
16 discrepancies in Defendants' reported data.

17 50. Defendants' failures create an entitlement to recovery by Plaintiff and members of
18 the Wage Statement Class in a civil action for all damages and/or penalties pursuant to Labor
19 Code § 226 *et. seq.*, including statutory penalties, civil penalties, reasonable attorneys' fees, and
20 costs of suit according to California Labor Code § 226 *et. seq.*

21 **SEVENTH CAUSE OF ACTION**

22 **UNFAIR COMPETITION**

23 **(AGAINST ALL DEFENDANTS)**

24 51. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

25 52. Defendants have engaged and continue to engage in unfair and/or unlawful
26 business practices in California in violation of California Business and Professions Code § 17200,
27 *et seq.*, by failing to pay Plaintiff and the Classes all minimum and overtime wages owed, all meal
28 and rest period premium wages, and by knowingly failing to provide accurate and complete wage

1 statements.

2 53. Defendants' utilization of these unfair and/or unlawful business practices deprived
3 Plaintiff, and continues to deprive members of the Classes, of compensation to which they are
4 legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage
5 over Defendants' competitors who have been and/or are currently employing workers and
6 attempting to do so in honest compliance with applicable wage and hour laws.

7 54. Because Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged
8 herein, Plaintiff, for himself and on behalf of the members of the Classes, seeks full restitution of
9 monies as necessary and according to proof, to restore any and all monies withheld, acquired,
10 and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

11 55. The acts complained of herein occurred within the four years immediately
12 preceding the filing of the Complaint in this action.

13 56. Plaintiff was compelled to retain the services of counsel to file this court action to
14 protect his interests and those of the Classes, to obtain restitution and injunctive relief on behalf
15 of Defendants' current non-exempt employees, and to enforce important rights affecting the
16 public interest. Plaintiff has thereby incurred the financial burden of attorneys' fees and costs,
17 which they are entitled to recover under Code of Civil Procedure § 1021.5.

18 **EIGHTH CAUSE OF ACTION**

19 **PRIVATE ATTORNEYS GENERAL ACT**

20 **(AGAINST ALL DEFENDANTS)**

21 57. Plaintiff re-alleges and incorporates by reference all previous paragraphs.

22 58. Defendants have committed several Labor Code violations against Plaintiff,
23 members of the Classes, and other aggrieved employees. Plaintiff, an "aggrieved employee"
24 within the meaning of Labor Code § 2698 *et seq.*, acting on behalf of himself and other aggrieved
25 employees, brings this representative action against Defendants to recover the civil penalties due
26 to Plaintiff, the members of the Classes, other aggrieved employees, and the State of California
27 according to proof pursuant to Labor Code § 558 and § 2699 (a) and (f) including, but not limited
28 to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200 for each

1 subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each
2 failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$50.00 for each
3 initial violation and \$100 for each subsequent violation pursuant to Labor Code § 558 per
4 employee per pay period; (3) \$100.00 for each initial violation and \$250.00 for each subsequent
5 violation pursuant to Labor Code § 1197.1 per employee per pay period; (4) \$250.00 for each
6 initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
7 employee per pay period; and/or (5) \$100.00 for each initial violation and \$200 for each
8 subsequent violation per employee per pay period for those violations of the Labor Code for
9 which no civil penalty is specifically provided, based on the following Labor Code violations;

- 10 a. Failing to pay Plaintiff and other aggrieved employees all overtime compensation
11 earned in violation of Labor Code §§ 204, 510, 558, 1194, and 1198;
- 12 b. Failing to pay Plaintiff and other aggrieved employees the statutory minimum
13 wage for all hours worked in violation of Labor Code §§ 1182.12, 1194, 1194.2,
14 and 1197;
- 15 c. Failing to provide meal periods as required by law and failing to pay meal period
16 premiums to Plaintiff and other aggrieved employees at these employees'
17 respective regular rates of compensation for meal period violations in violation of
18 Labor Code §§ 226.7, 512, and 558;
- 19 d. Failing to authorize and permit Plaintiff and other aggrieved employees all
20 required rest periods and failing to pay rest period premiums to Plaintiff and other
21 aggrieved employees at these employees' respective regular rates of compensation
22 for rest period violations in violation of Labor Code §§ 226.7, 516, and 558;
- 23 e. By failing to reimburse Plaintiff and other aggrieved employees for all necessary
24 expenditures incurred in violation of Labor Code §§ 2802 and 2804;
- 25 f. Failing to furnish Plaintiff and other aggrieved employees with accurate and
26 compliant itemized wage statements in violation of Labor Code § 226;
- 27 g. Failing to timely pay all final wages due to Plaintiff and other aggrieved employees
28

in violation of Labor Code §§ 201, 202, and 203;

h. Failing to pay Plaintiff and other aggrieved employees all wages earned at least twice during each calendar month in violation of Labor Code § 204 by; and

i. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code §§ 558 and 1174.

59. On or around November 9, 2020, Plaintiff notified Defendant, via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via e-mail of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698 *et seq.* with respect to violations of the California Labor Code identified herein. Now that sixty-five days have passed from Plaintiff notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

60. Based on the foregoing and given Emergency Rule 9(a) referenced in Paragraph 16 above, Plaintiff seeks to represent himself and all other Aggrieved Employees, as defined by Labor Code § 2699(c), which includes all current and former non-exempt employees of Defendants who have worked in California from May 15, 2019 through the present.

61. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699.

PRAYER

WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf this suit is brought against Defendants, as follows:

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as representative of the Classes;
3. For an order appointing counsel for Plaintiff as counsel for the Classes;
4. Upon the First Cause of Action, for compensatory, consequential, general and special damages according to proof pursuant to Labor Code §§ 204, 510, 558, 1194, and 1198;

1 5. Upon the Second Cause of Action, for payment of minimum wages, liquidated
2 damages, and penalties owed according to proof pursuant to Labor Code §§ 1182.12, 1194,
3 1194.2 and 1197;

4 6. Upon the Third Cause of Action, for statutory penalties pursuant to Labor Code §§
5 226.7, 512 and 558;

6 7. Upon the Fourth Cause of Action, for compensatory, consequential, general and
7 special damages according to proof pursuant to Labor Code §§ 226.7, 516, and 558;

8 8. Upon the Fifth Cause of Action, for compensatory, consequential, general and
9 special damages according to proof pursuant to Labor Code §§ 2802 and 2804.

10 9. Upon the Sixth Cause of Action, for statutory penalties pursuant to Labor Code §§
11 226 *et seq.* and 246;

12 10. Upon the Seventh Cause of Action, for restitution to Plaintiff and members of the
13 Classes of all money and/or property unlawfully acquired by Defendants by means of any acts or
14 practices declared by this Court to be in violation of California Business and Professions Code §
15 17200 *et seq.*;

16 11. Upon the Eighth Cause of Action, for civil penalties due to Plaintiff, other
17 aggrieved employees, and the State of California according to proof pursuant to Labor Code §§
18 558 and 2699(a) and (f) including, but not limited to: 1) \$100.00 for each initial violation for
19 each failure to pay each employee and \$200.00 for each subsequent violation or willful or
20 intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus
21 25% of the amount unlawfully withheld; (2) \$50.00 for each initial violation and \$100.00 for
22 each subsequent violation pursuant to Labor Code § 558 per employee per pay period; (3)
23 \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor
24 Code § 1197.1 per employee per pay period; (4) \$250.00 for each initial violation and \$1,000.00
25 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period;
26 and/or (5) \$100.00 for each initial violation and \$200.00 for each subsequent violation per
27 employee per pay period for those violations of the Labor Code for which no civil penalty is
28 specifically provided, based on the violations of Labor Code sections cited in Paragraph 58 (a)-

1 (i) above.;

2 12. Prejudgment interest on all due and unpaid wages pursuant to Labor Code § 218.6
3 and Civil Code §§ 3287 and 3289;

4 13. On all causes of action, for attorneys' fees and costs as provided by Labor Code §§
5 218.5, 226, 1194, and 2698 *et seq.*, and Code of Civil Procedure § 1021.5; and

6 14. For such other and further relief, the Court may deem just and proper.

7
8 Dated: January 14, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

9
10 By:


Fletcher W. Schmidt
Attorney for Plaintiff

11
12 **DEMAND FOR JURY TRIAL**

13
14 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

15
16 Dated: January 14, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

17
18 By:


Fletcher W. Schmidt
Attorney for Plaintiff